

(C) the portion of any distribution that is not includible in gross income.

(2) "Eligible retirement plan" means:

(A) an individual retirement account described by Section 408(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 408), an individual retirement annuity described in Section 408(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 408), an annuity plan described in Section 403(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 403), or a qualified trust described in Section 401(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401), that accepts the distributee's eligible rollover distribution; or

(B) an individual retirement account or individual retirement annuity, in the case of an eligible rollover distribution to a surviving spouse.

(3) "Distributee" means a member or former member, the member's or former member's surviving spouse, or the member's or former member's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as prescribed by Section 804.003, Government Code.

(4) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

SECTION 18. Subdivisions (9), (10), and (23), Section 1.02, and Subsection (g), Section 4.01, Chapter 452, Acts of the 72nd Legislature, Regular Session, 1991 (Article 6243n-1, Vernon's Texas Civil Statutes), are repealed.

SECTION 19. This Act takes effect September 1, 1995.

SECTION 20. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on March 21, 1995, by a viva-voce vote; passed the House on April 20, 1995, by a non-record vote.

Approved May 5, 1995.

Effective September 1, 1995.

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## CHAPTER 41

S.B. No. 958

### AN ACT

relating to the adoption of a nonsubstantive revision of statutes relating to state purchasing and general services, including conforming amendments, repealers, and penalties.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. ADOPTION OF SUBTITLE D, TITLE 10, GOVERNMENT CODE. Title 10, Government Code, is amended by adding Subtitle D to read as follows:

SUBTITLE D. STATE PURCHASING AND GENERAL SERVICES

CHAPTER 2151. GENERAL PROVISIONS

CHAPTER 2152. GENERAL SERVICES COMMISSION

[Chapters 2153 to 2154 reserved for expansion]

CHAPTER 2155. PURCHASING: GENERAL RULES AND PROCEDURES

CHAPTER 2156. PURCHASING METHODS

CHAPTER 2157. PURCHASING: PURCHASE OF AUTOMATED INFORMATION SYSTEMS

CHAPTER 2158. PURCHASING: MISCELLANEOUS PROVISIONS  
FOR PURCHASE OF CERTAIN GOODS AND SERVICES

[Chapters 2159 to 2160 reserved for expansion]

CHAPTER 2161. HISTORICALLY UNDERUTILIZED BUSINESSES

CHAPTER 2162. STATE COUNCIL ON COMPETITIVE GOVERNMENT

[Chapters 2163 to 2164 reserved for expansion]

CHAPTER 2165. STATE BUILDINGS, GROUNDS, AND PROPERTY

CHAPTER 2166. BUILDING CONSTRUCTION AND ACQUISITION

CHAPTER 2167. LEASE OF SPACE FOR STATE AGENCIES

[Chapters 2168 to 2169 reserved for expansion]

CHAPTER 2170. TELECOMMUNICATIONS SERVICES

CHAPTER 2171. TRAVEL AND VEHICLE FLEET SERVICES

CHAPTER 2172. MISCELLANEOUS GENERAL SERVICES PROVIDED BY COMMISSION

[Chapters 2173 to 2174 reserved for expansion]

CHAPTER 2175. SURPLUS AND SALVAGE PROPERTY

CHAPTER 2176. MAIL

SUBTITLE D. STATE PURCHASING AND GENERAL SERVICES

CHAPTER 2151. GENERAL PROVISIONS

Sec. 2151.001. SHORT TITLE

Sec. 2151.002. DEFINITIONS

Sec. 2151.003. REFERENCE

CHAPTER 2151. GENERAL PROVISIONS

Sec. 2151.001. SHORT TITLE. This subtitle may be cited as the State Purchasing and General Services Act. (V.A.C.S. Art. 601b, Sec. 1.01.)

Sec. 2151.002. DEFINITIONS. In this subtitle:

(1) "Commission" means the General Services Commission.

(2) "State agency" means:

(A) a department, commission, board, office, or other agency in the executive branch of state government created by the state constitution or a state statute, except the Texas High-Speed Rail Authority;

(B) the supreme court, the court of criminal appeals, a court of appeals, or the Texas Judicial Council; or

(C) a university system or an institution of higher education as defined by Section 61.003, Education Code, except a public junior college. (V.A.C.S. Art. 601b, Secs. 1.02(1), (2).)

Sec. 2151.003. REFERENCE. A statutory reference to the State Board of Control or the State Purchasing and General Services Commission means the General Services Commission. (V.A.C.S. Art. 601b, Sec. 11.01(b).)

**CHAPTER 2152. GENERAL SERVICES COMMISSION**

**SUBCHAPTER A. GENERAL PROVISIONS**

- Sec. 2152.001. COMMISSION
- Sec. 2152.002. SUNSET PROVISION

[Sections 2152.003 to 2152.050 reserved for expansion]

**SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

- Sec. 2152.051. COMPOSITION OF COMMISSION
- Sec. 2152.052. APPOINTMENTS
- Sec. 2152.053. ELIGIBILITY
- Sec. 2152.054. CONFLICTS OF INTEREST
- Sec. 2152.055. INFORMATION ABOUT QUALIFICATIONS AND STANDARDS OF CONDUCT
- Sec. 2152.056. REMOVAL OF COMMISSION MEMBER
- Sec. 2152.057. TERMS
- Sec. 2152.058. PRESIDING OFFICER; MEETINGS
- Sec. 2152.059. REIMBURSEMENT FOR EXPENSES
- Sec. 2152.060. PUBLIC INTEREST INFORMATION AND COMPLAINTS
- Sec. 2152.061. PUBLIC ACCESS
- Sec. 2152.062. ACTIVITY AND EFFICIENCY REPORT
- Sec. 2152.063. FISCAL REPORT
- Sec. 2152.064. REPORTS ON NONRESIDENT BIDDERS

[Sections 2152.065 to 2152.100 reserved for expansion]

**SUBCHAPTER C. PERSONNEL**

- Sec. 2152.101. EXECUTIVE DIRECTOR
- Sec. 2152.102. BOND OF EXECUTIVE DIRECTOR
- Sec. 2152.103. GENERAL POWERS AND DUTIES OF EXECUTIVE DIRECTOR
- Sec. 2152.104. ASSOCIATE DEPUTY DIRECTORS; DIVISIONS; DIVISION DIRECTORS
- Sec. 2152.105. RESPONSIBILITIES OF COMMISSION AND COMMISSION STAFF
- Sec. 2152.106. PROHIBITION OF GRANT OF AUTHORITY BY POWER OF ATTORNEY
- Sec. 2152.107. MERIT PAY
- Sec. 2152.108. CAREER LADDER
- Sec. 2152.109. EQUAL EMPLOYMENT OPPORTUNITY POLICY

**CHAPTER 2152. GENERAL SERVICES COMMISSION**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 2152.001. COMMISSION. The General Services Commission is an agency of the state. (V.A.C.S. Art. 601b, Sec. 2.01.)

Sec. 2152.002. SUNSET PROVISION. The General Services Commission is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this subtitle expires September 1, 2001. (V.A.C.S. Art. 601b, Sec. 2.07.)

[Sections 2152.003 to 2152.050 reserved for expansion]

## SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 2152.051. COMPOSITION OF COMMISSION. The commission is composed of six representatives of the public appointed by the governor with the advice and consent of the senate. (V.A.C.S. Art. 601b, Sec. 2.02 (part).)

Sec. 2152.052. APPOINTMENTS. (a) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(b) In making appointments under this section, the governor shall attempt to appoint women and members of different minority groups, including African Americans, Hispanic Americans, Native Americans, and Asian Americans. (V.A.C.S. Art. 601b, Sec. 2.02 (part).)

Sec. 2152.053. ELIGIBILITY. An individual is not eligible for appointment to the commission if the individual or the individual's spouse:

(1) is employed by or participates in the management of a business entity or other organization that contracts with the commission;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that contracts with the state; or

(3) uses or receives a substantial amount of tangible goods, services, or money from the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses. (V.A.C.S. Art. 601b, Sec. 2.02 (part).)

Sec. 2152.054. CONFLICTS OF INTEREST. (a) An individual may not serve as a member of the commission or act as the general counsel to the commission if the individual is required to register as a lobbyist under Chapter 305 because of the individual's activities for compensation on behalf of a profession related to the operation of the commission or a business entity that contracts with the state.

(b) An officer, employee, or paid consultant of a Texas trade association of business entities that contracts with the state may not:

(1) serve as a commission member; or

(2) be employed as a commission employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(c) An individual who is the spouse of an officer, manager, or paid consultant of a Texas trade association of business entities that contracts with the state may not:

(1) serve as a commission member; or

(2) be employed as a commission employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(d) For purposes of this section, a trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest. (V.A.C.S. Art. 601b, Sec. 2.061.)

Sec. 2152.055. INFORMATION ABOUT QUALIFICATIONS AND STANDARDS OF CONDUCT. The commission shall provide its members and employees, as often as necessary, information regarding their:

(1) qualifications for office or employment under this subtitle; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers or employees. (V.A.C.S. Art. 601b, Sec. 2.06(e).)

Sec. 2152.056. REMOVAL OF COMMISSION MEMBER. (a) It is a ground for removal from the commission that a member:

(1) violates a prohibition established by Section 2152.054;

(2) cannot discharge because of illness or disability the member's duties for a substantial part of the term for which the member is appointed; or

(3) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the commission. The presiding officer shall then notify the governor that a potential ground for removal exists. (V.A.C.S. Art. 601b, Sec. 2.051.)

Sec. 2152.057. TERMS. Commission members serve staggered six-year terms with two members' terms expiring January 31 of each odd-numbered year. (V.A.C.S. Art. 601b, Sec. 2.03.)

Sec. 2152.058. PRESIDING OFFICER; MEETINGS. (a) The governor annually shall appoint a presiding officer from among the commission members.

(b) The commission shall meet at least once each month. The commission may meet at other times at the call of the presiding officer or as provided by the commission's rules.

(c) Four members of the commission constitute a quorum. (V.A.C.S. Art. 601b, Secs. 2.04(a), (b), (c).)

Sec. 2152.059. REIMBURSEMENT FOR EXPENSES. A commission member is not entitled to compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a commission member. (V.A.C.S. Art. 601b, Sec. 2.05.)

Sec. 2152.060. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The commission shall prepare information of public interest describing the commission's functions and the procedures by which complaints are filed with and resolved by the commission. The commission by rule shall establish methods by which consumers, service recipients, and persons contracting with the state under this subtitle are notified of the commission's name, mailing address, and telephone number for directing complaints to the commission. The commission shall make the information available to the public and appropriate state agencies.

(b) The commission shall keep an information file about each complaint filed with the commission that the commission has authority to resolve.

(c) If a written complaint is filed with the commission that the commission has authority to resolve, the commission, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the complaint's status unless the notice would jeopardize an undercover investigation. (V.A.C.S. Art. 601b, Secs. 2.10(a), (b).)

Sec. 2152.061. PUBLIC ACCESS. (a) The commission shall prepare and maintain a written plan that describes how an individual who does not speak English can be provided reasonable access to the commission's programs.

(b) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the commission's jurisdiction.

(c) The commission shall comply with federal and state laws for program and facility accessibility. (V.A.C.S. Art. 601b, Secs. 2.04(d), 2.10(c).)

Sec. 2152.062. ACTIVITY AND EFFICIENCY REPORT. Not later than the 30th day after the date on which the regular session of the legislature begins, the commission shall report to the legislature concerning the commission's activities during the preceding legislative interim. The commission shall recommend amendments to law that would result in increased efficiency, economy, or productivity in the areas monitored by the commission. (V.A.C.S. Art. 601b, Sec. 2.08(a).)

Sec. 2152.063. FISCAL REPORT. (a) The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all money received and disbursed by the commission during the preceding fiscal year.

(b) The annual report must comply with form and time requirements provided by the General Appropriations Act. (V.A.C.S. Art. 601b, Sec. 2.08(b).)

Sec. 2152.064. **REPORTS ON NONRESIDENT BIDDERS.** (a) In this section, "nonresident bidder" means a bidder who does not maintain a permanently staffed full-time office in this state.

(b) During January and July of each year, a state agency shall file with the presiding officer of each house of the legislature and the presiding officers of the house appropriations committee and the senate finance committee a report that identifies each nonresident bidder to whom the agency awarded a contract that has a value of \$25,000 or more for the purchase of supplies, materials, services, or equipment during the six calendar months preceding the month in which the report is filed, if the agency awarded such a contract during the reporting period.

(c) A contractor to whom a state agency has awarded a contract shall report to the agency the identity of each nonresident bidder to whom the contractor has awarded a subcontract that has a value of \$25,000 or more, under the state contract, for the purchase of supplies, materials, services, or equipment. The state agency shall report that information in the manner prescribed by Subsection (b) for contracts awarded by the agency. (V.A.C.S. Art. 601b, Sec. 2.081.)

[Sections 2152.065 to 2152.100 reserved for expansion]

#### SUBCHAPTER C. PERSONNEL

Sec. 2152.101. **EXECUTIVE DIRECTOR.** (a) The commission shall employ an executive director who has demonstrated executive and organizational ability.

(b) The executive director serves at the commission's pleasure. (V.A.C.S. Art. 601b, Sec. 2.06(a) (part).)

Sec. 2152.102. **BOND OF EXECUTIVE DIRECTOR.** (a) The executive director shall execute a bond payable to the state in an amount the commission considers necessary. The bond must be:

- (1) approved by the commission; and
- (2) conditioned on the faithful performance of the executive director's duties.

(b) Premiums for the bond are payable from appropriations for the commission. (V.A.C.S. Art. 601b, Sec. 2.06(a) (part).)

Sec. 2152.103. **GENERAL POWERS AND DUTIES OF EXECUTIVE DIRECTOR.** (a) The executive director shall manage the commission's affairs under the commission's direction.

(b) The commission's directions to the executive director shall be:

- (1) made only at an open meeting of the commission; and
- (2) included in the commission's minutes for the meeting.

(c) The executive director may employ staff necessary to administer the commission's functions. (V.A.C.S. Art. 601b, Secs. 2.06(b) (part), (d).)

Sec. 2152.104. **ASSOCIATE DEPUTY DIRECTORS; DIVISIONS; DIVISION DIRECTORS.** (a) The commission shall have three associate deputy directors with:

- (1) one employed by the commission to serve at the pleasure of the commission to administer the surplus and salvage property division as provided by Subsection (b);
- (2) one employed by the executive director to administer the travel division and other divisions assigned to the person by the executive director; and
- (3) one employed by the executive director to administer the remaining divisions assigned to the person by the executive director.

(b) The commission shall direct the associate deputy director's management of the surplus and salvage property division. The associate deputy director shall report directly to the commission. Commission direction of the associate deputy director's management of the surplus and salvage property division shall occur only at an open meeting of the commission and shall be made a part of the minutes of the meeting.

(c) Instead of employing an associate deputy director under Subsection (a)(1), the commission may assign directly to the executive director the duty to administer, under the commission's direction, the surplus and salvage property division.

(d) Each division shall be managed by a division director who shall report to the associate deputy director who administers the division, except as provided by Subsection (b).

(e) In accordance with this subchapter, the executive director shall appoint a director of facilities construction and space management, who shall:

(1) be a registered architect or registered professional engineer; and

(2) have proven administrative ability and experience in the fields of building design and construction. (V.A.C.S. Art. 601b, Secs. 2.06(c), 2.09(a), (b), (c) (part), 5.15(b).)

Sec. 2152.105. RESPONSIBILITIES OF COMMISSION AND COMMISSION STAFF. The commission shall develop and implement policies that clearly define the responsibilities of the commission and the commission's staff. (V.A.C.S. Art. 601b, Sec. 2.06(f).)

Sec. 2152.106. PROHIBITION OF GRANT OF AUTHORITY BY POWER OF ATTORNEY. A commission member may not by power of attorney grant authority to the executive director or another commission employee. (V.A.C.S. Art. 601b, Sec. 2.06(b) (part).)

Sec. 2152.107. MERIT PAY. (a) The executive director or the executive director's designated representative shall develop a system of annual performance evaluations.

(b) Merit pay for commission employees must be based on the system established under this section. (V.A.C.S. Art. 601b, Sec. 2.06(h).)

Sec. 2152.108. CAREER LADDER. The executive director or the executive director's designated representative shall develop an intra-agency career ladder program. The program must require intra-agency posting of all non-entry-level positions concurrently with any public posting. (V.A.C.S. Art. 601b, Sec. 2.06(g).)

Sec. 2152.109. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The executive director or the executive director's designated representative shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel, that comply with Chapter 21, Labor Code;

(2) a comprehensive analysis of the commission's workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the commission's workforce of all individuals for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address areas of significant underuse.

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated at least annually;

(3) be reviewed annually by the Commission on Human Rights for compliance with Subsection (a)(1); and

(4) be filed with the governor's office.

(c) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as a part of other biennial reports made to the legislature. (V.A.C.S. Art. 601b, Secs. 2.06(i), (j), (k).)

[Chapters 2153 to 2154 reserved for expansion]

#### CHAPTER 2155. PURCHASING: GENERAL RULES AND PROCEDURES

##### SUBCHAPTER A. GENERAL PROVISIONS

#### Sec. 2155.001. DEFINITIONS

- Sec. 2155.002. COMMISSION FOCUS ON LARGE EXPENDITURES
- Sec. 2155.003. CONFLICT OF INTEREST
- Sec. 2155.004. CERTAIN BIDS AND CONTRACTS PROHIBITED
- Sec. 2155.005. COMPLIANCE WITH ANTITRUST LAWS

[Sections 2155.006 to 2155.060 reserved for expansion]

SUBCHAPTER B. GENERAL PURCHASING REQUIREMENTS,  
PROCEDURES, AND PROGRAMS

- Sec. 2155.061. COMMISSION PURCHASING SYSTEM
- Sec. 2155.062. PURCHASE METHODS
- Sec. 2155.063. COMPETITIVE BIDDING REQUIREMENT
- Sec. 2155.064. SCHEDULE AND BULK PURCHASING
- Sec. 2155.065. CONTRACTS WITH DEPARTMENT OF CRIMINAL JUSTICE
- Sec. 2155.066. REVIEW OF SPECIFICATIONS
- Sec. 2155.067. PROPRIETARY PURCHASES
- Sec. 2155.068. UNIFORM STANDARDS AND SPECIFICATIONS
- Sec. 2155.069. TESTING AND INSPECTION
- Sec. 2155.070. FAILURE TO MEET SPECIFICATIONS
- Sec. 2155.071. STATISTICAL INFORMATION ON CONSUMPTION AND USE
- Sec. 2155.072. STATEWIDE OR REGIONAL SERVICES CONTRACTS; COMMISSION STUDIES
- Sec. 2155.073. PARTICIPATION BY SMALL BUSINESSES IN STATE PURCHASING

[Sections 2155.074 to 2155.130 reserved for expansion]

SUBCHAPTER C. DELEGATIONS OF AND EXCLUSIONS FROM  
COMMISSION'S PURCHASING AUTHORITY AND CERTAIN  
EXEMPTIONS FROM COMPETITIVE BIDDING

- Sec. 2155.131. DELEGATION OF AUTHORITY TO STATE AGENCIES
- Sec. 2155.132. PURCHASES LESS THAN SPECIFIED MONETARY AMOUNT
- Sec. 2155.133. DELEGATION OF AUTHORITY TO INSTITUTION OF HIGHER EDUCATION
- Sec. 2155.134. GROUP PURCHASING PROGRAMS
- Sec. 2155.135. PURCHASES FROM HIGHER EDUCATION RESEARCH FUNDS
- Sec. 2155.136. PURCHASE OF CERTAIN MEDICAL EQUIPMENT BY MEDICAL OR DENTAL UNIT
- Sec. 2155.137. EMERGENCY PURCHASES
- Sec. 2155.138. EXEMPTION OF GOODS OR SERVICES OF BLIND OR VISUALLY IMPAIRED PERSONS
- Sec. 2155.139. EXEMPTION FOR CERTAIN LIBRARIES AND HEALTH FACILITIES
- Sec. 2155.140. PURCHASE FROM GIFT OR GRANT NOT WITHIN COMMISSION'S PURCHASING AUTHORITY
- Sec. 2155.141. CERTAIN OTHER PURCHASES NOT WITHIN COMMISSION'S PURCHASING AUTHORITY
- Sec. 2155.142. PURCHASES BY VETERANS' LAND BOARD
- Sec. 2155.143. PURCHASE OF CARE AND TREATMENT SERVICES BY TEXAS YOUTH COMMISSION

[Sections 2155.144 to 2155.200 reserved for expansion]

SUBCHAPTER D. EXTENSION OF COMMISSION PURCHASING  
SERVICES TO OTHER ENTITIES

- Sec. 2155.201. PURCHASE OF MOTOR VEHICLES FOR SCHOOL DISTRICTS
- Sec. 2155.202. MENTAL HEALTH AND MENTAL RETARDATION COMMUNITY CENTERS; ASSISTANCE ORGANIZATIONS
- Sec. 2155.203. PURCHASES BY LEGISLATURE AND LEGISLATIVE AGENCIES
- Sec. 2155.204. LOCAL GOVERNMENT PURCHASING PROGRAM



[Sections 2155.205 to 2155.260 reserved for expansion]

**SUBCHAPTER E. MASTER BIDDERS LIST**

- Sec. 2155.261. APPLICABILITY
- Sec. 2155.262. UNIFORM REGISTRATION FORM
- Sec. 2155.263. COMMISSION TO MAINTAIN MASTER BIDDERS LIST
- Sec. 2155.264. AGENCY SOLICITATION OF BIDS OR PROPOSALS FOR ACQUISITION OVER \$15,000
- Sec. 2155.265. ACCESS TO MASTER BIDDERS LIST
- Sec. 2155.266. REGISTRATION AND RENEWAL FEE
- Sec. 2155.267. COMMISSION RULES AND PROCEDURES REGARDING MASTER BIDDERS LIST
- Sec. 2155.268. USE OF STATE AGENCY BIDDERS LIST
- Sec. 2155.269. WAIVER
- Sec. 2155.270. AGENCY ASSISTANCE WITH BIDDERS LIST ISSUES

[Sections 2155.271 to 2155.320 reserved for expansion]

**SUBCHAPTER F. INSPECTION AND CERTIFICATION OF GOODS OR SERVICES; AUDITS**

- Sec. 2155.321. DEFINITIONS
- Sec. 2155.322. INSPECTION AND CERTIFICATION
- Sec. 2155.323. COMPTROLLER AUDIT; TRANSMISSION OF PURCHASE INFORMATION TO COMMISSION
- Sec. 2155.324. COMMISSION AUDIT
- Sec. 2155.325. COMMISSION AUDIT AFTER ISSUANCE OF WARRANT
- Sec. 2155.326. UPDATE OF COMMISSION FILES AND RECORDS
- Sec. 2155.327. INTERAGENCY PURCHASES AND TRANSACTIONS

[Sections 2155.328 to 2155.380 reserved for expansion]

**SUBCHAPTER G. PAYMENT PROVISIONS**

- Sec. 2155.381. INVOICE
- Sec. 2155.382. PAYMENT BY WARRANT
- Sec. 2155.383. ADVANCE PAYMENTS TO STATE OR FEDERAL AGENCY
- Sec. 2155.384. AUTHORITY TO PAY CHARGES
- Sec. 2155.385. CREDIT CARDS
- Sec. 2155.386. PREPAYMENT FOR LIBRARY MATERIALS BY INSTITUTION OF HIGHER EDUCATION
- Sec. 2155.387. PAYMENT FOR ROAD CONSTRUCTION MATERIALS DELIVERED BY VEHICLE EXCEEDING WEIGHT LIMITS

[Sections 2155.388 to 2155.440 reserved for expansion]

**SUBCHAPTER H. PURCHASING PREFERENCES**

- Sec. 2155.441. PREFERENCE FOR PRODUCTS OF PERSONS WITH MENTAL RETARDATION OR PHYSICAL DISABILITIES
- Sec. 2155.442. PREFERENCE FOR ENERGY EFFICIENT PRODUCTS
- Sec. 2155.443. PREFERENCE FOR RUBBERIZED ASPHALT PAVING
- Sec. 2155.444. PREFERENCE TO TEXAS AND UNITED STATES PRODUCTS
- Sec. 2155.445. PREFERENCE FOR RECYCLED PRODUCTS
- Sec. 2155.446. PURCHASE AND USE OF PAPER CONTAINING RECYCLED FIBERS
- Sec. 2155.447. PURCHASE OF RECYCLED OIL
- Sec. 2155.448. EXPENDITURES FOR RECYCLED MATERIALS

## CHAPTER 2155. PURCHASING: GENERAL RULES AND PROCEDURES

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2155.001. DEFINITIONS. In this chapter and Chapters 2156, 2157, and 2158:

- (1) "Goods" means supplies, materials, or equipment.
- (2) "Service" means the furnishing of skilled or unskilled labor or professional work, but does not include a:
  - (A) professional service subject to Subchapter A, Chapter 2254;
  - (B) service of a state agency employee;
  - (C) consulting service or service of a private consultant as defined by Subchapter B, Chapter 2254; or
  - (D) service of a public utility. (V.A.C.S. Art. 601b, Sec. 3.01(c); New.)

Sec. 2155.002. COMMISSION FOCUS ON LARGE EXPENDITURES. To the extent possible, the commission shall focus its efforts under this chapter and Chapters 2156, 2157, and 2158 on purchases and contracts that involve relatively large amounts of money. (V.A.C.S. Art. 601b, Sec. 3.012.)

Sec. 2155.003. CONFLICT OF INTEREST. (a) A commission member, employee, or appointee may not:

- (1) have an interest in, or in any manner be connected with, a contract or bid for a purchase of goods or services by an agency of the state; or
  - (2) in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation.
- (b) A commission member, employee, or appointee who violates Subsection (a)(2) is subject to dismissal. (V.A.C.S. Art. 601b, Sec. 3.19.)

Sec. 2155.004. CERTAIN BIDS AND CONTRACTS PROHIBITED. (a) A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based.

(b) This section does not prohibit a bidder or contract participant from providing free technical assistance to a state agency. (V.A.C.S. Art. 601b, Sec. 3.102.)

Sec. 2155.005. COMPLIANCE WITH ANTITRUST LAWS. (a) A bidder offering to sell goods or services to the state shall certify on each bid submitted that neither the bidder, nor the person represented by the bidder, nor any person acting for the represented person has:

- (1) violated the antitrust laws codified by Chapter 15, Business & Commerce Code, or the federal antitrust laws; or
- (2) directly or indirectly communicated the bid to a competitor or other person engaged in the same line of business.

(b) The attorney general shall prepare the certification statement. The statement shall be made a part of the bid form. (V.A.C.S. Art. 601b, Sec. 3.13.)

[Sections 2155.006 to 2155.060 reserved for expansion]

## SUBCHAPTER B. GENERAL PURCHASING REQUIREMENTS, PROCEDURES, AND PROGRAMS

Sec. 2155.061. COMMISSION PURCHASING SYSTEM. (a) The commission shall acquire by purchase, lease, rental, or another manner all goods and services for a state agency, including a purchase that does not require a competitive bid or a spot purchase.

(b) The commission shall operate an effective and economical system for purchasing goods and services. (V.A.C.S. Art. 601b, Secs. 3.01(a) (part), (b).)

Sec. 2155.062. PURCHASE METHODS. (a) In purchasing goods and services the commission may use, but is not limited to, the:

- (1) contract purchase procedure;
- (2) multiple award contract procedure; or
- (3) open market purchase procedure.

(b) Chapter 2156 provides additional information on purchase methods.

(c) Chapter 2157 provides additional information on purchase of automated information systems. (V.A.C.S. Art. 601b, Sec. 3.10(a) (part); New.)

Sec. 2155.063. **COMPETITIVE BIDDING REQUIREMENT.** Except as otherwise provided by this subtitle, a purchase of or contract for goods or services shall, whenever possible, be accomplished through competitive bidding. (V.A.C.S. Art. 601b, Sec. 3.10(a) (part).)

Sec. 2155.064. **SCHEDULE AND BULK PURCHASING.** The commission may combine orders in a system of schedule purchasing and shall attempt to benefit from bulk purchasing. (V.A.C.S. Art. 601b, Sec. 3.10(a) (part).)

Sec. 2155.065. **CONTRACTS WITH DEPARTMENT OF CRIMINAL JUSTICE.** The commission is authorized to make contracts with the Texas Department of Criminal Justice for the purchase of goods and services for use by another state agency. (V.A.C.S. Art. 601b, Sec. 3.23.)

Sec. 2155.066. **REVIEW OF SPECIFICATIONS.** The commission shall review the specifications and purchase conditions of goods or services considered for purchase. (V.A.C.S. Art. 601b, Sec. 3.09(a).)

Sec. 2155.067. **PROPRIETARY PURCHASES.** (a) If, after review under Section 2155.066, the commission finds that specifications and conditions of a purchase request describe a product that is proprietary to one vendor and do not permit an equivalent product to be supplied, the commission shall require the requesting state agency to justify in writing the specifications or conditions.

(b) The agency head or the presiding officer of the agency's governing body must sign the written justification. For an institution of higher education, the individual designated by the president or governing body as purchasing officer for the institution may sign the written justification.

(c) The written justification must:

- (1) explain the need for the specifications;
- (2) state the reason competing products are not satisfactory; and
- (3) provide other information requested by the commission.

(d) If the commission requires a resubmission with written justification, the commission shall notify the requesting state agency of the requirement not later than the 10th day after the date of receiving the purchase request.

(e) If the commission, after considering all factors, takes exception to the justifications, the commission shall purchase the goods or services as requested and report the reasons for its exception to the:

- (1) agency head or the presiding officer of the agency's governing body;
- (2) state auditor;
- (3) Legislative Budget Board; and
- (4) governor.

(f) The commission shall issue an invitation to bid to vendors not later than the 20th day after the date of receiving the required written justification.

(g) The commission may not delay processing a purchase requisition by submitting the specifications and conditions to the state auditor's office for comment or recommendation before issuing the invitation to bid to vendors. (V.A.C.S. Art. 601b, Secs. 3.09(b), (c), (d), (e), (f).)

Sec. 2155.068. **UNIFORM STANDARDS AND SPECIFICATIONS.** (a) The commission may coordinate uniform standards and specifications for goods purchased by the commission.

(b) The commission shall enlist the cooperation of other state agencies in the establishment, maintenance, and revision of uniform standards and specifications and shall foster their use to accomplish continuously the most efficient purchase of goods.

(c) The commission shall review contracts and procedures to ensure that all services meet contract specifications.

(d) As part of the standards and specifications program, the commission shall review contracts for recycling waste produced at state buildings. (V.A.C.S. Art. 601b, Secs. 3.17(a), (b).)

Sec. 2155.069. TESTING AND INSPECTION. (a) The commission shall test and inspect goods and services under a program to ensure compliance with specifications.

(b) The commission may contract for testing under this section.

(c) The commission shall provide for testing and inspection of all costly purchases and may adopt rules necessary to carry out this duty. (V.A.C.S. Art. 601b, Sec. 3.17(c) (part).)

Sec. 2155.070. FAILURE TO MEET SPECIFICATIONS. (a) A state agency that determines that goods or services received do not meet specifications shall promptly notify the commission in writing of the reasons for the determination. The commission shall immediately make its own determination of whether the goods and services meet specifications.

(b) The commission has the sole power to determine that goods and services meet or fail to meet specifications.

(c) On determining that contract specifications or conditions have not been met, the commission shall act against the defaulting contractor, with the assistance of the attorney general as necessary.

(d) If the commission receives repeated complaints against a vendor, the commission shall remove the vendor's name from the commission's bidders list for not longer than one year. (V.A.C.S. Art. 601b, Sec. 3.17(c) (part).)

Sec. 2155.071. STATISTICAL INFORMATION ON CONSUMPTION AND USE. (a) The commission shall keep statistical information on the consumption and use of goods and services purchased for a state agency and on request shall provide the information to the agency.

(b) The commission shall cooperate with the state budget offices and the state auditor in preparing information on the consumption and use of goods and services. (V.A.C.S. Art. 601b, Sec. 3.18.)

Sec. 2155.072. STATEWIDE OR REGIONAL SERVICES CONTRACTS; COMMISSION STUDIES. (a) The commission annually shall select for study at least one service that is purchased by one or more state agencies. The commission shall study a selected service to determine whether the state would benefit if the service were provided to appropriate state agencies under a regional or statewide contract. The commission shall give priority to studying services for which the commission has delegated the purchasing function to many state agencies.

(b) The commission is not required to enter into a statewide or regional contract for the provision of a service to state agencies if more than five bidders are willing to provide the service to the state under a statewide or regional contract. (V.A.C.S. Art. 601b, Sec. 3.181.)

Sec. 2155.073. PARTICIPATION BY SMALL BUSINESSES IN STATE PURCHASING. The commission shall foster participation of small businesses in the purchasing activities of the state by:

(1) assisting state agencies in developing procedures to ensure the inclusion of small businesses on state agency master bid lists;

(2) informing small businesses of state purchasing opportunities;

(3) assisting small businesses in complying with the procedures for bidding on state contracts;

(4) working with state and federal agencies and with private organizations in disseminating information on state purchasing procedures and the opportunities for small businesses to participate in state contracts;

- (5) assisting state agencies with the development of a comprehensive list of small businesses capable of providing goods or services to the state;
- (6) making recommendations to state agencies to simplify contract specifications and terms to increase the opportunities for small business participation;
- (7) working with state agencies to establish a statewide policy for increasing the use of small businesses;
- (8) assisting state agencies in seeking small businesses capable of supplying goods and services that the agencies require;
- (9) assisting state agencies in identifying and advising small businesses on the types of goods and services needed by the agencies; and
- (10) assisting state agencies in increasing the volume of business placed with small businesses. (V.A.C.S. Art. 601b, Sec. 3.281.)

[Sections 2155.074 to 2155.130 reserved for expansion]

SUBCHAPTER C. DELEGATIONS OF AND EXCLUSIONS FROM  
COMMISSION'S PURCHASING AUTHORITY AND CERTAIN  
EXEMPTIONS FROM COMPETITIVE BIDDING

Sec. 2155.131. DELEGATION OF AUTHORITY TO STATE AGENCIES. The commission may delegate purchasing functions to a state agency. (V.A.C.S. Art. 601b, Sec. 3.06(b).)

Sec. 2155.132. PURCHASES LESS THAN SPECIFIED MONETARY AMOUNT. (a) A state agency is delegated the authority to purchase goods if the purchase does not exceed \$5,000. The agency may, however, use the commission's services for those purchases.

(b) The commission by rule may delegate to a state agency the authority to purchase goods if the purchase exceeds \$5,000.

(c) The commission by rule:

(1) shall prescribe procedures for a delegated purchase; and

(2) may delegate to the comptroller the commission's authority under Subchapter F to audit purchases and purchase information if the purchases do not exceed \$500 or a greater amount prescribed by the commission.

(d) Competitive bidding, whether formal or informal, is not required for a purchase by a state agency if the purchase does not exceed \$1,000, or a greater amount prescribed by commission rule.

(e) Goods purchased under this section may not include:

(1) an item for which a contract has been awarded under the contract purchase procedure, unless the quantity purchased is less than the minimum quantity specified in the contract;

(2) an item required by statute to be purchased from a particular source; or

(3) a scheduled item that has been designated for purchase by the commission.

(f) A large purchase may not be divided into small lot purchases to meet the dollar limits prescribed by this section. The commission may not require that unrelated purchases be combined into one purchase order to exceed the dollar limits prescribed by this section.

(g) A state agency making a purchase under this section for which competitive bidding is required must:

(1) attempt to obtain at least three competitive bids from sources that normally offer for sale the goods being purchased; and

(2) comply with Subchapter E. (V.A.C.S. Art. 601b, Sec. 3.08.)

Sec. 2155.133. DELEGATION OF AUTHORITY TO INSTITUTION OF HIGHER EDUCATION. (a) At the request of an institution of higher education or other agency of higher education, the commission shall delegate to the institution or agency authority to

purchase goods and services for research projects from state funds appropriated to the institution or agency for that purpose.

(b) An institution or agency acting under delegated authority shall follow the commission's monetary limits and procedures regarding competitive bidding in the purchase of research goods and services. The institution or agency may also consider other factors in making purchases, including quality, reliability, expected life span, and compatibility with existing equipment.

(c) In this section, "institution of higher education" and "other agency of higher education" have the meanings assigned by Section 61.003, Education Code. (V.A.C.S. Art. 601b, Secs. 3.06(a), (c).)

Sec. 2155.134. GROUP PURCHASING PROGRAMS. (a) An institution of higher education, as defined by Section 61.003, Education Code, may purchase goods through a group purchasing program that offers discount prices to institutions of higher education.

(b) The commission shall adopt rules that allow purchases to be made through group purchasing programs except when the commission determines within a reasonable time after receiving notice of a particular purchase that a lower price is available through the commission.

(c) The rules must provide for commission determination of compliance with state laws and commission rules on purchasing from a historically underutilized business.

(d) This section does not affect other authority granted to an institution of higher education under this subtitle. (V.A.C.S. Art. 601b, Sec. 3.061.)

Sec. 2155.135. PURCHASES FROM HIGHER EDUCATION RESEARCH FUNDS. (a) An item to be purchased from higher education research funds may be acquired through competitive sealed proposals.

(b) To make a purchase under this section, the commission, or an institution of higher education making the acquisition if research purchasing authority has been delegated to that institution under Section 2155.133, must first determine that competitive sealed bidding or informal competitive bidding is not practical or is disadvantageous to the state.

(c) If the institution of higher education oversees the competitive sealed proposal procedure, the institution shall follow the competitive sealed proposals procedures outlined by Subchapter C, Chapter 2157, for the commission. (V.A.C.S. Art. 601b, Sec. 3.022(a) (part).)

Sec. 2155.136. PURCHASE OF CERTAIN MEDICAL EQUIPMENT BY MEDICAL OR DENTAL UNIT. (a) A medical or dental unit listed under Section 61.003, Education Code, may purchase through the use of competitive sealed proposals:

- (1) prototypes of medical equipment not yet available on the market;
- (2) medical equipment so new to the market that its benefits are not fully known; and
- (3) major medical equipment that is so technically complex that development of specifications for competitive bidding is not feasible.

(b) To make a purchase under this section, the medical or dental unit must:

- (1) follow the competitive sealed proposals procedures under Subchapter C, Chapter 2157, and commission rules on the use of competitive sealed proposals; and
- (2) submit to the commission a written finding that competitive sealed bidding or informal competitive bidding is not practical or is disadvantageous to the state for the proposed acquisition. (V.A.C.S. Art. 601b, Sec. 3.022(h).)

Sec. 2155.137. EMERGENCY PURCHASES. (a) The commission shall provide for emergency purchases by a state agency and may set a monetary limit on the amount of an emergency purchase.

(b) The provisions of Section 2161.181 relating to historically underutilized businesses apply to an emergency purchase made under this section. (V.A.C.S. Art. 601b, Sec. 3.07.)

Sec. 2155.138. EXEMPTION OF GOODS OR SERVICES OF BLIND OR VISUALLY IMPAIRED PERSONS. The competitive bidding provisions of this chapter do not apply to a state purchase of goods or services that:

- (1) are made or provided by blind or visually impaired persons;

- (2) are offered for sale to a state agency through efforts made under law by the Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons;
- (3) meet state specifications for quantity and quality; and
- (4) cost not more than the fair market price of similar items. (V.A.C.S. Art. 601b, Sec. 3.22.)

Sec. 2155.139. EXEMPTION FOR CERTAIN LIBRARIES AND HEALTH FACILITIES. (a) Section 2155.061 does not apply to an acquisition if:

- (1) the acquisition is for a:
  - (A) library operated as a part of a university system or institution of higher education; or
  - (B) state-owned hospital or clinic; and
- (2) the goods or services acquired are:
  - (A) serial and journal subscriptions;
  - (B) library materials, including books not available under a statewide contract and papers;
  - (C) library services, including binding services not available under a statewide contract; or
  - (D) library equipment and supplies.

(b) Section 2155.061 does not apply to a purchase of goods by a state-owned hospital or clinic through a group purchasing program that offers purchasing services at discount prices to two or more hospital or clinic facilities if the chief executive officer of the hospital or clinic or the officer's designee certifies that the purchase of the particular goods through the group purchasing program is the most cost-effective method of purchasing available. (V.A.C.S. Art. 601b, Sec. 3.01(a) (part).)

Sec. 2155.140. PURCHASE FROM GIFT OR GRANT NOT WITHIN COMMISSION'S PURCHASING AUTHORITY. The commission's authority does not apply to a purchase of goods or services from a gift or grant, including an industrial or federal grant or contract in support of research. (V.A.C.S. Art. 601b, Sec. 3.02 (part).)

Sec. 2155.141. CERTAIN OTHER PURCHASES NOT WITHIN COMMISSION'S PURCHASING AUTHORITY. The commission's authority does not extend to a purchase of goods and services:

- (1) for resale;
- (2) for an auxiliary enterprise; or
- (3) for an organized activity relating to an instructional department of an institution of higher learning or a similar activity of another state agency. (V.A.C.S. Art. 601b, Sec. 3.02 (part).)

Sec. 2155.142. PURCHASES BY VETERANS' LAND BOARD. This subtitle does not apply to a purchase by or for the Veterans' Land Board in connection with improvements to, repairs to, or maintenance of land or other activities of the board under Section 161.175, Natural Resources Code. (V.A.C.S. Art. 601b, Sec. 3.052.)

Sec. 2155.143. PURCHASE OF CARE AND TREATMENT SERVICES BY TEXAS YOUTH COMMISSION. (a) The Texas Youth Commission may purchase care and treatment services, including educational services, for its wards.

(b) The Texas Youth Commission shall:

- (1) negotiate purchases under this section to achieve fair and reasonable prices at rates that do not exceed any maximum provided by law; and
- (2) select service providers according to each provider's qualifications and demonstrated competence. (V.A.C.S. Art. 601b, Sec. 3.01(e).)

[Sections 2155.144 to 2155.200 reserved for expansion]

**SUBCHAPTER D. EXTENSION OF COMMISSION PURCHASING SERVICES TO OTHER ENTITIES**

**Sec. 2155.201. PURCHASE OF MOTOR VEHICLES FOR SCHOOL DISTRICTS.** (a) The commission shall purchase for school districts participating in the Foundation School Program under Subchapter F, Chapter 21, Education Code, all motor vehicles, including buses, used for transporting schoolchildren. The commission also shall purchase the chassis, bodies, tires, and tubes for those buses.

(b) A purchase under this section must comply with the alternative fuels requirements prescribed by Subchapter F, Chapter 21, Education Code. (V.A.C.S. Art. 601b, Sec. 3.03.)

**Sec. 2155.202. MENTAL HEALTH AND MENTAL RETARDATION COMMUNITY CENTERS; ASSISTANCE ORGANIZATIONS.** A community center for mental health and mental retardation services that receives state grants-in-aid under Subchapter B, Chapter 534, Health and Safety Code, and an assistance organization as defined by Section 2175.001 that receives state funds may purchase goods and services through the commission. (V.A.C.S. Art. 601b, Sec. 3.04.)

**Sec. 2155.203. PURCHASES BY LEGISLATURE AND LEGISLATIVE AGENCIES.** A house of the legislature, or an agency, council, or committee of the legislature, including the Legislative Budget Board, the Texas Legislative Council, the state auditor's office, and the Legislative Reference Library, may use the commission's purchasing services for purchasing goods and services, including items covered by Section 21, Article XVI, Texas Constitution. (V.A.C.S. Art. 601b, Sec. 3.05.)

**Sec. 2155.204. LOCAL GOVERNMENT PURCHASING PROGRAM.** The commission's provision of purchasing services for local governments is governed by Subchapter D, Chapter 271, Local Government Code. (New.)

[Sections 2155.205 to 2155.260 reserved for expansion]

**SUBCHAPTER E. MASTER BIDDERS LIST**

**Sec. 2155.261. APPLICABILITY.** This subchapter:

(1) applies to a purchase or other acquisition under this chapter or Chapters 2156, 2157, and 2158 for which competitive bidding or competitive sealed proposals are required;

(2) applies to a state agency that makes a purchase or other acquisition under this chapter or Chapters 2156, 2157, and 2158, including the commission and an agency that makes an acquisition under Section 2155.131 or 2155.133; and

(3) does not apply to a purchase or other acquisition made by the commission under Subchapter A, Chapter 2156. (V.A.C.S. Art. 601b, Sec. 3.101(a).)

**Sec. 2155.262. UNIFORM REGISTRATION FORM.** (a) The commission shall develop a uniform registration form for applying to do business with the commission or with another state agency.

(b) The commission and each state agency shall make the form available to an applicant.

(c) The form must include an application for:

(1) certification as a historically underutilized business;

(2) a payee identification number for use by the comptroller; and

(3) placement on the commission's master bidders list.

(d) A state agency shall submit to the commission each uniform registration form that it receives. The commission shall send to the comptroller a copy of each uniform registration form. (V.A.C.S. Art. 601b, Secs. 3.101(b), (c).)

**Sec. 2155.263. COMMISSION TO MAINTAIN MASTER BIDDERS LIST.** (a) The commission shall maintain a master bidders list and annually register on the list the name and address of each vendor that applies for registration under rules adopted under this subchapter. The commission may include other relevant vendor information on the list.



(b) The commission shall maintain the master bidders list in a manner that facilitates a state agency's solicitation of vendors that serve the agency's geographic area. (V.A.C.S. Art. 601b, Sec. 3.101(d) (part).)

Sec. 2155.264. AGENCY SOLICITATION OF BIDS OR PROPOSALS FOR ACQUISITION OVER \$15,000. A state agency that proposes to make a purchase or other acquisition that will cost more than \$15,000 shall solicit bids or proposals from each eligible vendor on the master bidders list that serves the agency's geographic region. (V.A.C.S. Art. 601b, Sec. 3.101(d) (part).)

Sec. 2155.265. ACCESS TO MASTER BIDDERS LIST. (a) The commission shall make the master bidders list available to each state agency that makes a purchase or other acquisition to which this subchapter applies.

(b) The commission shall make the list available either electronically or in another form, depending on each state agency's needs. (V.A.C.S. Art. 601b, Sec. 3.101(e).)

Sec. 2155.266. REGISTRATION AND RENEWAL FEE. (a) The commission may charge a person applying for registration on the master bidders list a registration fee and may charge a registrant an annual renewal fee in an amount designed to recover the commission's costs in:

- (1) making and maintaining the master bidders list; and
- (2) soliciting bids or proposals under this subchapter.

(b) The commission shall set the amount of the fees by rule. (V.A.C.S. Art. 601b, Sec. 3.101(f).)

Sec. 2155.267. COMMISSION RULES AND PROCEDURES REGARDING MASTER BIDDERS LIST. (a) The commission shall adopt procedures for:

- (1) making and maintaining the master bidders list; and
- (2) removing an inactive vendor from the list.

(b) The commission shall establish by rule a vendor classification process under which only a vendor able to make a bid or proposal on a particular purchase or other acquisition may be solicited under this subchapter. (V.A.C.S. Art. 601b, Secs. 3.101(g), (h).)

Sec. 2155.268. USE OF STATE AGENCY BIDDERS LIST. (a) A state agency may maintain and use its own bidders list only if the commission determines by rule that the agency has specialized needs that can best be met through maintaining and using its own specialized bidders list.

(b) The commission by rule may prescribe the categories of purchases or other acquisitions for which a state agency's specialized bidders list may be used.

(c) A state agency may supplement the bidders list with its own list of historically underutilized businesses if it determines that the supplementation will increase the number of historically underutilized businesses that submit bids. (V.A.C.S. Art. 601b, Sec. 3.101(i).)

Sec. 2155.269. WAIVER. The commission by rule may establish a process under which the requirement for soliciting bids or proposals from eligible vendors on a bidders list may be waived for an appropriate state agency or an appropriate purchase or other acquisition under circumstances in which the requirement is not warranted. (V.A.C.S. Art. 601b, Sec. 3.101(j) (part).)

Sec. 2155.270. AGENCY ASSISTANCE WITH BIDDERS LIST ISSUES. The commission may assist a state agency with issues relating to a bidders list. (V.A.C.S. Art. 601b, Sec. 3.101(j) (part).)

[Sections 2155.271 to 2155.320 reserved for expansion]

#### SUBCHAPTER F. INSPECTION AND CERTIFICATION OF GOODS OR SERVICES; AUDITS

Sec. 2155.321. DEFINITIONS. In this subchapter:

- (1) "Financial information" means information that the comptroller determines is necessary to audit a claim under Chapter 403.

(2) "Purchase information" means information that the commission determines is necessary to audit a purchase under this subchapter. (V.A.C.S. Art. 601b, Sec. 3.15(a).)

Sec. 2155.322. INSPECTION AND CERTIFICATION. (a) A state agency shall:

(1) inspect and evaluate at the time of receipt all goods or services that the agency receives to determine whether the goods or services comply with the contract under which they were purchased; and

(2) certify, if true, that the goods or services comply with contract requirements and that the invoice for them is correct.

(b) Promptly after the later of the receipt of the invoice or the receipt of the goods or services, the agency shall send to the comptroller the certification, together with the financial information and purchase information provided by the invoice and purchase voucher, on a form or in the manner agreed to by the comptroller and the commission.

(c) The commission by rule may require that purchase information be sent directly to the commission in circumstances under which the commission considers it necessary. (V.A.C.S. Art. 601b, Sec. 3.15(b).)

Sec. 2155.323. COMPTROLLER AUDIT; TRANSMISSION OF PURCHASE INFORMATION TO COMMISSION. (a) On receipt of a certification, financial information, and purchase information from a state agency as required by this subchapter, the comptroller shall audit the financial information under Chapter 403.

(b) If the comptroller approves the financial information, the comptroller shall determine whether commission rules require the commission to audit the purchase information. If a commission audit is required, the comptroller shall promptly send the certification and purchase information to the commission using the method and format agreed to by the comptroller and the commission.

(c) The purchase information sent to the commission must include the:

- (1) agency number;
- (2) agency requisition number;
- (3) agency voucher number;
- (4) voucher amount;
- (5) fiscal year in which the purchase is made;
- (6) object code; and
- (7) vendor identification number.

(d) In adopting rules, the commission may determine the types of purchases for which a commission audit is required. (V.A.C.S. Art. 601b, Sec. 3.15(c).)

Sec. 2155.324. COMMISSION AUDIT. (a) Not later than the eighth day after the date the commission receives the certification and purchase information required by this subchapter from the comptroller, the commission shall audit the information for compliance with applicable purchasing statutes and commission rules.

(b) The commission may determine the auditing method used under this section, including stratified or statistical sampling techniques.

(c) The commission shall notify the comptroller of the results of the commission's audit, using the method and format agreed to by the commission and the comptroller. (V.A.C.S. Art. 601b, Sec. 3.15(d).)

Sec. 2155.325. COMMISSION AUDIT AFTER ISSUANCE OF WARRANT. (a) The commission may audit purchase information after a warrant has been issued if the audit will expedite the payment process.

(b) For audits under this section, the commission by rule shall:

- (1) determine the types of purchases that will be audited after a warrant is issued; and
- (2) specify the purchase information that a state agency must send to the comptroller or the commission before a warrant is issued.

(c) For purchases audited after a warrant is issued, the comptroller shall send the certification and purchase information to the commission under commission rules. (V.A.C.S. Art. 601b, Secs. 3.15(e), (f).)

Sec. 2155.326. **UPDATE OF COMMISSION FILES AND RECORDS.** To enable the commission to update periodically computer records and close purchase order files, the comptroller shall, on request, furnish the commission with information detailing all vouchers paid under this subchapter and Section 2155.132. (V.A.C.S. Art. 601b, Sec. 3.15(g).)

Sec. 2155.327. **INTERAGENCY PURCHASES AND TRANSACTIONS.** This subchapter does not apply to an interagency purchase or transaction. An interagency purchase or transaction must be accomplished on a special voucher or electronically as prescribed by the comptroller. (V.A.C.S. Art. 601b, Sec. 3.15(h).)

[Sections 2155.328 to 2155.380 reserved for expansion]

#### SUBCHAPTER G. PAYMENT PROVISIONS

Sec. 2155.381. **INVOICE.** (a) The contractor or seller of goods or services contracted for by the commission shall submit an invoice to the ordering agency at the address shown on the purchase order.

(b) The invoice shall be prepared and submitted as provided by commission rule. (V.A.C.S. Art. 601b, Sec. 3.14.)

Sec. 2155.382. **PAYMENT BY WARRANT.** (a) After the comptroller and the commission have approved financial information and purchase information, when advance approval of that information is required by commission rule, the comptroller shall draw a warrant on the state treasury for:

- (1) the amount due on the invoice; or
- (2) the amount on the invoice that has been allowed.

(b) The comptroller shall complete the procedures for drawing the warrant not later than the eighth day after the date of receiving the necessary information. If a payment is not due until after the eighth day, the comptroller may delay drawing a warrant if the delay will maximize the state's cash flow. (V.A.C.S. Art. 601b, Sec. 3.16.)

Sec. 2155.383. **ADVANCE PAYMENTS TO STATE OR FEDERAL AGENCY.** A state agency may make an advance payment to a federal or other state agency for goods purchased from the agency if an advance payment will expedite delivery of the goods. (V.A.C.S. Art. 601b, Sec. 3.24.)

Sec. 2155.384. **AUTHORITY TO PAY CHARGES.** The commission or a state agency may pay a restocking charge, cancellation fee, or other similar charge if the commission determines that the charge is justifiable. (V.A.C.S. Art. 601b, Sec. 3.30.)

Sec. 2155.385. **CREDIT CARDS.** (a) If authorized by rule adopted by the comptroller under Section 403.023, the commission may contract with one or more credit card issuers for state agencies to use credit cards to pay for purchases. The commission may not enter into a contract that conflicts with the comptroller's rules.

(b) This section does not apply to contracts regarding travel services or the use of credit cards to pay for travel services under Chapter 2171.

(c) In this section and notwithstanding Section 2151.002, "state agency" has the meaning assigned by Section 403.023(e). (V.A.C.S. Art. 601b, Sec. 3.33, as added by Ch. 449, Acts 73rd Leg., 1993.)

Sec. 2155.386. **PREPAYMENT FOR LIBRARY MATERIALS BY INSTITUTION OF HIGHER EDUCATION.** An institution of higher education may pay for books and other published library materials before receiving them if reasonably necessary for the efficient operation of the institution's libraries. (V.A.C.S. Art. 601b, Sec. 3.01(d).)

Sec. 2155.387. **PAYMENT FOR ROAD CONSTRUCTION MATERIALS DELIVERED BY VEHICLE EXCEEDING WEIGHT LIMITS.** A state agency that purchases road construction materials may pay for road construction materials delivered in a vehicle that

exceeds the maximum gross weight authorized by law for the vehicle an amount computed using the lesser of:

- (1) the actual weight of the load; or
- (2) the weight determined by subtracting the weight of the vehicle from the sum of the maximum gross weight authorized by law for the vehicle and the tolerance allowance set for the gross weight of that vehicle by Subdivision 1, Section 6, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 601b, Sec. 3.31.)

[Sections 2155.388 to 2155.440 reserved for expansion]

#### SUBCHAPTER H. PURCHASING PREFERENCES

Sec. 2155.441. PREFERENCE FOR PRODUCTS OF PERSONS WITH MENTAL RETARDATION OR PHYSICAL DISABILITIES. The products of workshops, organizations, or corporations whose primary purpose is training and employing individuals having mental retardation or a physical disability shall be given preference if they meet state specifications regarding quantity, quality, and price. (V.A.C.S. Art. 601b, Sec. 3.20.)

Sec. 2155.442. PREFERENCE FOR ENERGY EFFICIENT PRODUCTS. The commission shall give preference to energy efficient products in purchases made under this subtitle if:

- (1) the products meet state specifications regarding quantity and quality; and
- (2) the cost of the product is equal to or less than the cost of other similar products that are not energy efficient. (V.A.C.S. Art. 601b, Sec. 3.202.)

Sec. 2155.443. PREFERENCE FOR RUBBERIZED ASPHALT PAVING. The commission may give preference to rubberized asphalt paving made from scrap tires by a facility in this state in purchases of rubberized asphalt paving material if the cost as determined by a life-cycle cost benefit analysis does not exceed by more than 15 percent the bid cost of alternative paving materials. (V.A.C.S. Art. 601b, Sec. 3.211.)

Sec. 2155.444. PREFERENCE TO TEXAS AND UNITED STATES PRODUCTS. (a) The commission and all state agencies making purchases of goods, including agricultural products, shall give preference to those produced or grown in this state or offered by Texas bidders as follows:

- (1) goods produced in this state or offered by Texas bidders shall equally be given preference if the cost to the state and quality are equal; and
  - (2) agricultural products grown in this state shall be given first preference and agricultural products offered by Texas bidders shall be given second preference, if the cost to the state and quality are equal.
- (b) If goods, including agricultural products, produced or grown in this state or offered by Texas bidders are not equal in cost and quality to other products, then goods, including agricultural products, produced or grown in other states of the United States shall be given preference over foreign products if the cost to the state and quality are equal.

(c) In this section, "agricultural products" includes textiles and other similar products. (V.A.C.S. Art. 601b, Sec. 3.28.)

Sec. 2155.445. PREFERENCE FOR RECYCLED PRODUCTS. (a) The commission and state agencies shall give preference to a product made of recycled materials in purchases made under this subtitle if the product meets state specifications regarding quantity and quality.

(b) The commission regularly shall review and revise its procurement procedures and specifications for the purchase of goods to:

- (1) eliminate procedures and specifications that explicitly discriminate against products made of recycled materials; and
- (2) encourage the use of products made of recycled materials.

(c) In developing new procedures and specifications, the commission shall encourage the use of recycled products and products that may be recycled or reused. (V.A.C.S. Art. 601b, Sec. 3.212.)

Sec. 2155.446. **PURCHASE AND USE OF PAPER CONTAINING RECYCLED FIBERS.** (a) The commission shall contract for paper containing the highest proportion of recycled fibers for all purposes for which paper with recycled fibers may be used and to the extent that the paper is available at a reasonable price through normal commercial sources to supply the state's needs.

(b) A state agency that purchases through the commission shall place orders for papers containing recycled fibers to the highest extent of its needs and to the extent that the paper is available through the commission's purchasing procedures. (V.A.C.S. Art. 601b, Sec. 3.21.)

Sec. 2155.447. **PURCHASE OF RECYCLED OIL.** The commission, all state agencies, and all state agency employees who purchase motor oil and other automotive lubricants for state-owned vehicles shall give preference to motor oils and lubricants that contain at least 25 percent recycled oil if the cost to the state and the quality are comparable to those of new oil and lubricants. (V.A.C.S. Art. 601b, Sec. 3.291.)

Sec. 2155.448. **EXPENDITURES FOR RECYCLED MATERIALS.** (a) A state agency shall spend not less than eight percent of its consumable procurement budget for each fiscal year for goods that have recycled material content or that are remanufactured or environmentally sensitive, as those terms are defined by the commission.

(b) Not later than January 1 of each year, a state agency shall deliver a report of the total expenditures in the areas subject to Subsection (a) and the amount spent in each category for the previous fiscal year to the:

- (1) governor;
- (2) lieutenant governor;
- (3) speaker of the house of representatives; and
- (4) Legislative Budget Board. (V.A.C.S. Art. 601b, Sec. 3.33, as added by Ch. 899, Acts 73rd Leg., 1993.)

#### CHAPTER 2156. PURCHASING METHODS

##### SUBCHAPTER A. CONTRACT PURCHASE PROCEDURE

- Sec. 2156.001. **CONTRACT PURCHASE PROCEDURE AUTHORIZED**
- Sec. 2156.002. **SOLICITATION OF BIDS THROUGH PUBLIC NOTICE**
- Sec. 2156.003. **SOLICITATION OF BIDS THROUGH BIDDERS LIST; BID INVITATIONS**
- Sec. 2156.004. **BID DEPOSIT**
- Sec. 2156.005. **BID SUBMISSION AND OPENING; PUBLIC INSPECTION**
- Sec. 2156.006. **SUBMISSION OF ADDITIONAL MATERIAL WITH BID**
- Sec. 2156.007. **CONTRACT AWARD**
- Sec. 2156.008. **REJECTION OF BIDS**
- Sec. 2156.009. **REASONS FOR AWARD**
- Sec. 2156.010. **TIE BIDS**
- Sec. 2156.011. **PERFORMANCE BOND**

[Sections 2156.012 to 2156.060 reserved for expansion]

##### SUBCHAPTER B. OPEN MARKET PURCHASE PROCEDURE

- Sec. 2156.061. **USE OF OPEN MARKET PURCHASE PROCEDURE AUTHORIZED; USE OF PROCEDURE**
- Sec. 2156.062. **MINIMUM NUMBER AND EVALUATION OF BIDS**
- Sec. 2156.063. **SOLICITATION OF BIDS**
- Sec. 2156.064. **RECORDING AND INSPECTION OF BIDS**
- Sec. 2156.065. **AGENCY REVIEW OF BIDS**
- Sec. 2156.066. **STATEMENT OF REASONS FOR AWARD**

[Sections 2156.067 to 2156.120 reserved for expansion]

SUBCHAPTER C. COMPETITIVE SEALED PROPOSALS FOR  
ACQUISITION OF CERTAIN GOODS AND SERVICES

- Sec. 2156.121. ELIGIBLE ACQUISITIONS
- Sec. 2156.122. PURCHASE AUTHORITY LIMITED TO COMMISSION
- Sec. 2156.123. DETERMINATION REGARDING COMPETITIVE BIDDING
- Sec. 2156.124. SOLICITATION OF PROPOSALS
- Sec. 2156.125. DEVELOPMENT OF SPECIFICATIONS
- Sec. 2156.126. OPENING AND FILING OF PROPOSALS; PUBLIC INSPECTION
- Sec. 2156.127. DISCUSSION AND REVISION OF PROPOSALS
- Sec. 2156.128. CONTRACT AWARD
- Sec. 2156.129. ADOPTION OF RULES; STATE AGENCY ASSISTANCE
- Sec. 2156.130. COMPETITIVE SEALED PROPOSALS FOR TELECOMMUNICATIONS  
AND AUTOMATED INFORMATION SYSTEMS NOT AFFECTED

CHAPTER 2156. PURCHASING METHODS

SUBCHAPTER A. CONTRACT PURCHASE PROCEDURE

Sec. 2156.001. CONTRACT PURCHASE PROCEDURE AUTHORIZED. The commission may use the contract purchase procedure to purchase goods and services. (V.A.C.S. Art. 601b, Sec. 3.10(a) (part).)

Sec. 2156.002. SOLICITATION OF BIDS THROUGH PUBLIC NOTICE. (a) A notice inviting bids shall be published at least once in at least one newspaper of general circulation in the state not later than the seventh day before the last day set for the receipt of bids.

(b) The notice must:

- (1) include a general description of the items to be purchased;
- (2) state the location at which bid forms and specifications may be obtained; and
- (3) state the time and place for opening bids. (V.A.C.S. Art. 601b, Sec. 3.11(a).)

Sec. 2156.003. SOLICITATION OF BIDS THROUGH BIDDERS LIST; BID INVITATIONS. (a) The commission shall maintain a bidders list and add or delete names from the list according to applicable standards provided by Section 2156.007.

(b) An invitation to bid on an item to be purchased may be sent only to a vendor on the bidders list who has expressed a desire to bid on that type of item.

(c) The commission may use the bidders list in making a purchase by any purchase method. (V.A.C.S. Art. 601b, Sec. 3.11(b).)

Sec. 2156.004. BID DEPOSIT. (a) The commission, as considered necessary, may require a bid deposit in an amount determined by the commission. The amount of the deposit, if any, must be stated in the public notice and the invitation to bid.

(b) The commission, with the cooperation of the state auditor, shall establish and maintain a record of each bid deposit and its disposition.

(c) On the award of a bid or the rejection of all bids, the commission shall refund the bid deposit of an unsuccessful bidder.

(d) The commission may accept from a bidder a bid deposit in the form of a blanket bond. (V.A.C.S. Art. 601b, Sec. 3.11(c).)

Sec. 2156.005. BID SUBMISSION AND OPENING; PUBLIC INSPECTION. (a) A bidder must submit a sealed bid to the commission. The bid must be identified on the envelope as a bid.

(b) The commission shall open bids at the time and place stated in the invitation to bid.

(c) The state auditor or a member of the state auditor's staff may be present at a bid opening.

(d) The commission shall keep a tabulation of all bids received available for public inspection under rules adopted by the commission. (V.A.C.S. Art. 601b, Sec. 3.11(d).)

Sec. 2156.006. SUBMISSION OF ADDITIONAL MATERIAL WITH BID. (a) A bidder as an essential element of the materiality of the bid must comply with the specified time limit for the submission of written information, samples, or models at or before the time for bid opening.

(b) The commission may waive this requirement if the failure to comply is beyond the bidder's control. (V.A.C.S. Art. 601b, Sec. 3.11(e) (part).)

Sec. 2156.007. CONTRACT AWARD. (a) The commission shall award a contract to the bidder submitting the lowest and best bid conforming to the specifications required.

(b) In determining the lowest and best bidder, the commission may consider the safety record of the bidder, the entity represented by the bidder, and any person acting for the represented entity only if:

(1) the commission has adopted a written definition and criteria for accurately determining the safety record of a bidder; and

(2) the commission gave notice in the bid specifications to prospective bidders that a bidder's safety record may be considered in determining the lowest and best bidder.

(c) A determination of a bidder's safety record may not be arbitrary and capricious.

(d) In determining the lowest and best bidder, in addition to price the commission shall consider:

(1) the quality and availability of the goods or contractual services and their adaptability to the use required;

(2) the number and scope of conditions attached to the bid;

(3) the bidder's ability, capacity, and skill to perform the contract or provide the service required;

(4) the bidder's ability to perform the contract or provide the service promptly, or in the time required, without delay or interference;

(5) the bidder's character, responsibility, integrity, reputation, and experience;

(6) the quality of performance of previous contracts or services;

(7) the bidder's previous and existing compliance with laws relating to the contract or service;

(8) the bidder's previous or existing noncompliance with specification requirements relating to the time of submission of specified information, including samples, models, drawings, or certificates;

(9) the sufficiency of the bidder's financial resources and ability to perform the contract or provide the service; and

(10) the bidder's ability to provide future maintenance, repair parts, and service for the use of the contract's subject. (V.A.C.S. Art. 601b, Secs. 3.11(e) (part), (f) (part).)

Sec. 2156.008. REJECTION OF BIDS. (a) The commission shall reject a bid in which there is a material failure to comply with specification requirements.

(b) The commission may reject all bids or parts of bids if the rejection serves the state's interest. (V.A.C.S. Art. 601b, Sec. 3.11(f) (part).)

Sec. 2156.009. REASONS FOR AWARD. On award of a contract, the division of the commission responsible for purchasing shall prepare and file with other records relating to the transaction a statement of the reasons for making the award to the successful bidder and the factors considered in determining the lowest and best bid. (V.A.C.S. Art. 601b, Sec. 3.11(g).)

Sec. 2156.010. TIE BIDS. In the case of tie bids, quality and service being equal, a contract shall be awarded under commission rules. (V.A.C.S. Art. 601b, Sec. 3.11(h).)

Sec. 2156.011. PERFORMANCE BOND. (a) The commission may require a performance bond before executing a contract.

(b) The commission may require the bond in an amount that the commission finds reasonable and necessary to protect the state's interests.

(c) Any bond required shall be issued on the condition that the bidder faithfully execute the terms of the contract.

(d) Any bond required shall be filed with the commission.

(e) Recoveries under the bond may continue until the bond is exhausted. (V.A.C.S. Art. 601b, Sec. 3.11(i).)

[Sections 2156.012 to 2156.060 reserved for expansion]

#### SUBCHAPTER B. OPEN MARKET PURCHASE PROCEDURE

Sec. 2156.061. **USE OF OPEN MARKET PURCHASE PROCEDURE AUTHORIZED; USE OF PROCEDURE.** On a commission determination that a purchase of goods or services may be made most effectively in the open market, the commission may use the open market purchase procedure and the purchase may be made without newspaper advertising. (V.A.C.S. Art. 601b, Secs. 3.10(a) (part), 3.12(a).)

Sec. 2156.062. **MINIMUM NUMBER AND EVALUATION OF BIDS.** An open market purchase shall, to the extent possible, be:

(1) based on at least three competitive bids; and

(2) awarded to the lowest and best bidder in accordance with standards set forth in Chapters 2155, 2156, 2157, and 2158. (V.A.C.S. Art. 601b, Sec. 3.12(b).)

Sec. 2156.063. **SOLICITATION OF BIDS.** The commission shall solicit bids under this subchapter by direct mail, telephone, or telegraph. (V.A.C.S. Art. 601b, Sec. 3.12(c).)

Sec. 2156.064. **RECORDING AND INSPECTION OF BIDS.** (a) The commission shall keep a record of all open market orders and bids submitted on the orders.

(b) A tabulation of the bids shall be open for public inspection, under rules established by the commission.

(c) A tabulation of the bids shall always be open for inspection by the state auditor or the auditor's representative. (V.A.C.S. Art. 601b, Sec. 3.12(d).)

Sec. 2156.065. **AGENCY REVIEW OF BIDS.** (a) On the request of a state agency to review the bids on a purchase, the commission shall send or make available to the requesting agency copies of each bid received and the commission's recommended award.

(b) If, after review of the bids and evaluation of the quality of goods or services offered in the bids, the state agency determines that the bid selected by the commission is not the lowest and best bid, the agency may file with the commission a written recommendation that the award be made to the bidder who, according to the agency's determination, made the lowest and best bid. The agency recommendation must include a justification of the agency's determination.

(c) The commission shall consider, but is not bound by, the agency recommendation in making the award. (V.A.C.S. Art. 601b, Sec. 3.12(e).)

Sec. 2156.066. **STATEMENT OF REASONS FOR AWARD.** The division of the commission responsible for purchasing shall prepare and file with other records relating to a transaction under this subchapter a statement of the reasons for placing an order with a successful bidder for the transaction and the factors considered in determining the lowest and best bid for the transaction. (V.A.C.S. Art. 601b, Sec. 3.12(f).)

[Sections 2156.067 to 2156.120 reserved for expansion]

#### SUBCHAPTER C. COMPETITIVE SEALED PROPOSALS FOR ACQUISITION OF CERTAIN GOODS AND SERVICES

Sec. 2156.121. **ELIGIBLE ACQUISITIONS.** The commission may follow a procedure using competitive sealed proposals to acquire:

(1) goods having an acquisition cost of \$1 million or more; or

(2) routine services having an acquisition cost of \$100,000 or more. (V.A.C.S. Art. 601b, Sec. 3.0221(a).)



Sec. 2156.122. **PURCHASE AUTHORITY LIMITED TO COMMISSION.** Only the commission may use competitive sealed proposals under this subchapter to acquire goods or services. The commission may not delegate this authority to a state agency. (V.A.C.S. Art. 601b, Sec. 3.0221(b).)

Sec. 2156.123. **DETERMINATION REGARDING COMPETITIVE BIDDING.** To acquire goods or services under this subchapter, the commission must first determine in an open meeting that competitive sealed bidding and informal competitive bidding are not practical or are disadvantageous to the state. (V.A.C.S. Art. 601b, Sec. 3.0221(c).)

Sec. 2156.124. **SOLICITATION OF PROPOSALS.** The commission shall:

- (1) solicit proposals under this subchapter by a request for proposals; and
- (2) give public notice of a request for proposals in the manner provided for requests for bids under Subchapter B. (V.A.C.S. Art. 601b, Sec. 3.0221(d).)

Sec. 2156.125. **DEVELOPMENT OF SPECIFICATIONS.** The commission shall consult with the appropriate personnel of a requisitioning agency to develop the specifications for a request for proposals under this subchapter. (V.A.C.S. Art. 601b, Sec. 3.0221(e).)

Sec. 2156.126. **OPENING AND FILING OF PROPOSALS; PUBLIC INSPECTION.** (a) The commission shall avoid disclosing the contents of each proposal on opening the proposal and during negotiations with competing offerors.

(b) The commission shall file each proposal in a register of proposals, which, after a contract is awarded, is open for public inspection unless the register contains information that is excepted from disclosure as an open record under Subchapter C, Chapter 552. (V.A.C.S. Art. 601b, Sec. 3.0221(f).)

Sec. 2156.127. **DISCUSSION AND REVISION OF PROPOSALS.** (a) As provided in a request for proposals and under rules adopted by the commission, the commission may discuss acceptable or potentially acceptable proposals with offerors to assess an offeror's ability to meet the solicitation requirements and shall invite a requisitioning agency to participate in discussions conducted under this section.

(b) After receiving a proposal but before making an award, the commission may permit the offeror to revise the proposal to obtain the best final offer.

(c) The commission may not disclose information derived from proposals submitted from competing offerors in conducting discussions under this section.

(d) The commission shall provide each offeror an equal opportunity to discuss and revise proposals. (V.A.C.S. Art. 601b, Secs. 3.0221(g), (h).)

Sec. 2156.128. **CONTRACT AWARD.** (a) The commission shall make a written award of a contract to the offeror whose proposal is the most advantageous to the state, considering price and the evaluation factors in the request for proposals.

(b) The commission shall refuse all offers if none of the offers submitted is acceptable.

(c) The commission shall state in writing in the contract file the reasons for making an award. (V.A.C.S. Art. 601b, Sec. 3.0221(i).)

Sec. 2156.129. **ADOPTION OF RULES; STATE AGENCY ASSISTANCE.** The commission may adopt rules and request assistance from other state agencies to perform its responsibilities under this subchapter. (V.A.C.S. Art. 601b, Sec. 3.0221(j).)

Sec. 2156.130. **COMPETITIVE SEALED PROPOSALS FOR TELECOMMUNICATIONS AND AUTOMATED INFORMATION SYSTEMS NOT AFFECTED.** This subchapter does not affect Subchapter C, Chapter 2157. (V.A.C.S. Art. 601b, Sec. 3.0221(k).)

#### CHAPTER 2157. PURCHASING: PURCHASE OF AUTOMATED INFORMATION SYSTEMS SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2157.001. **DEFINITIONS**

Sec. 2157.002. **APPLICABILITY**

Sec. 2157.003. **DETERMINING BEST VALUE**

Sec. 2157.004. **TRANSFERS AND LOANS**

[Sections 2157.005 to 2157.060 reserved for expansion]

SUBCHAPTER B. CATALOGUE PURCHASE METHOD

- Sec. 2157.061. USE OF CATALOGUE PURCHASE METHOD REQUIRED UNLESS BEST VALUE AVAILABLE ELSEWHERE
- Sec. 2157.062. APPLICATION PROCESS FOR QUALIFICATION AS VENDOR
- Sec. 2157.063. DIRECT PURCHASE OR LEASE BY STATE AGENCY; NEGOTIATION OF ADDITIONAL TERMS
- Sec. 2157.064. REGIONAL AND STATEWIDE QUALIFICATION OF VENDORS
- Sec. 2157.065. STANDARDS AND CRITERIA FOR QUALIFICATION OF VENDORS
- Sec. 2157.066. CATALOGUE REQUIREMENTS
- Sec. 2157.067. CATALOGUE PURCHASING AVAILABLE TO CERTAIN LOCAL GOVERNMENTS

[Sections 2157.068 to 2157.120 reserved for expansion]

SUBCHAPTER C. REQUESTS FOR PROPOSALS PURCHASE METHOD

- Sec. 2157.121. ACQUISITION THROUGH COMPETITIVE SEALED PROPOSALS
- Sec. 2157.122. SOLICITATION OF PROPOSALS; PUBLIC NOTICE
- Sec. 2157.123. OPENING AND FILING PROPOSALS; PUBLIC INSPECTION
- Sec. 2157.124. DISCUSSION AND REVISION OF PROPOSAL
- Sec. 2157.125. CONTRACT AWARD; FACTORS CONSIDERED
- Sec. 2157.126. RULES

[Sections 2157.127 to 2157.180 reserved for expansion]

SUBCHAPTER D. PREAPPROVED CONTRACT TERMS AND CONDITIONS

- Sec. 2157.181. PREAPPROVED CONTRACT TERMS AND CONDITIONS
- Sec. 2157.182. VALIDITY OF PREAPPROVED TERMS AND CONDITIONS; RENEGOTIATION
- Sec. 2157.183. PREAPPROVED TERM OR CONDITION PART OF CONTRACT; CHANGE OF TERM OR CONDITION
- Sec. 2157.184. NOTIFICATION OF STATE AGENCIES AND VENDORS

CHAPTER 2157. PURCHASING: PURCHASE OF  
AUTOMATED INFORMATION SYSTEMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2157.001. DEFINITIONS. In this chapter:

(1) "Automated information system" includes:

- (A) the computers on which the information system is automated;
- (B) a service related to the automation of the system, including computer software, or the computers; and
- (C) a telecommunications apparatus or device that serves as a component of a voice, data, or video communications network for transmitting, switching, routing, multiplexing, modulating, amplifying, or receiving signals on the network.

(2) "Qualified information systems vendor" means a manufacturer or reseller of an automated information system who is authorized by the commission to publish a catalogue of products and services that may be directly purchased by a state agency. (V.A.C.S. Art. 601b, Secs. 1.02(4), (6).)

Sec. 2157.002. APPLICABILITY. Subchapters A, B, and D apply only to a state agency to which Chapter 2054 applies. (New.)

Sec. 2157.003. DETERMINING BEST VALUE. "Best value" means the lowest overall cost of an automated information system. In determining the lowest overall cost for a

purchase or lease of an automated information system under this chapter, the commission or a state agency shall consider factors including:

- (1) the purchase price;
- (2) the compatibility to facilitate the exchange of existing data;
- (3) the capacity for expanding and upgrading to more advanced levels of technology;
- (4) quantitative reliability factors;
- (5) the level of training required to bring persons using the system to a stated level of proficiency;
- (6) the technical support requirements for the maintenance of data across a network platform and the management of the network's hardware and software; and
- (7) the compliance with applicable Department of Information Resources statewide standards validated by criteria adopted by the department by rule. (V.A.C.S. Art. 601b, Sec. 1.02(5).)

Sec. 2157.004. TRANSFERS AND LOANS. A state agency that acquires a telecommunications device, system, or service or an automated information system by interagency transfer, contract, or loan, or by public loan, shall comply with the requirements of Chapter 2054. (V.A.C.S. Art. 601b, Sec. 3.023.)

[Sections 2157.005 to 2157.060 reserved for expansion]

#### SUBCHAPTER B. CATALOGUE PURCHASE METHOD

Sec. 2157.061. USE OF CATALOGUE PURCHASE METHOD REQUIRED UNLESS BEST VALUE AVAILABLE ELSEWHERE. The commission or a state agency shall purchase an automated information system through the catalogue procedure provided by this subchapter unless the commission or state agency determines that the best value may be obtained from another purchase method authorized by this subtitle. (V.A.C.S. Art. 601b, Sec. 3.081(f).)

Sec. 2157.062. APPLICATION PROCESS FOR QUALIFICATION AS VENDOR. (a) To sell or lease an automated information system under this subchapter to a state agency, a vendor must apply to the commission for designation as a qualified information systems vendor. The commission shall prescribe the application process.

(b) At a minimum, the commission shall require an applicant to submit:

(1) a catalogue containing each product and service eligible for purchase by a state agency, including for each product or service:

- (A) a description;
- (B) the list price; and
- (C) the price to a state agency;

(2) a maintenance, repair, and support plan for each eligible product or service;

(3) proof of the applicant's financial resources and ability to perform; and

(4) a guarantee that the vendor will make available equivalent replacement parts for a product sold to the state until at least the third anniversary of the date the product is discontinued. (V.A.C.S. Art. 601b, Sec. 3.081(a).)

Sec. 2157.063. DIRECT PURCHASE OR LEASE BY STATE AGENCY; NEGOTIATION OF ADDITIONAL TERMS. (a) If a purchase or lease is the best value available and is in the state's best interest, a state agency may under this subchapter purchase or lease an automated information system directly from a qualified information systems vendor and may negotiate additional terms and conditions to be included in a contract relating to the purchase or lease.

(b) In determining which goods or services are in the state's best interest, the agency shall consider:

- (1) the installation and hardware costs;

- (2) the overall life-cycle cost of the system or equipment;
- (3) the estimated cost of employee training and estimated increase in employee productivity;
- (4) the estimated software and maintenance costs; and
- (5) the rules that prescribe applicable statewide standards adopted by the Department of Information Resources. (V.A.C.S. Art. 601b, Sec. 3.081(d).)

Sec. 2157.064. REGIONAL AND STATEWIDE QUALIFICATION OF VENDORS. (a) The commission shall establish standards and criteria for determining regional and statewide qualification of vendors under this subchapter.

(b) On qualification by the commission, a vendor remains qualified under this subchapter unless the commission determines that the vendor does not meet the standards and criteria provided by this subchapter.

(c) An applicant designated by the commission as a regional qualified information systems vendor may sell a product or service listed by the vendor's catalogue directly to a state agency within a region defined by the commission.

(d) An applicant designated by the commission as a statewide qualified information systems vendor may sell a product or service listed by the vendor's catalogue directly to a state agency. (V.A.C.S. Art. 601b, Sec. 3.081(b) (part), as added by Chs. 684, 906, Acts 73rd Leg., 1993.)

Sec. 2157.065. STANDARDS AND CRITERIA FOR QUALIFICATION OF VENDORS. In establishing standards and criteria for qualification of vendors under this subchapter, the commission shall consider:

- (1) a vendor's ability to provide adequate and reliable support and maintenance;
- (2) a vendor's ability to provide adequate and reliable support and maintenance in the future;
- (3) the technical adequacy and reliability of a vendor's products; and
- (4) standards adopted by the Department of Information Resources. (V.A.C.S. Art. 601b, Sec. 3.081(b) (part), as added by Chs. 684, 906, Acts 73rd Leg., 1993.)

Sec. 2157.066. CATALOGUE REQUIREMENTS. (a) A vendor designated by the commission as a qualified information systems vendor shall publish and maintain a catalogue described by Section 2157.062(b)(1).

(b) The vendor shall revise the catalogue as necessary to include price changes or the availability of goods or services and shall forward to the commission and all eligible purchasers a copy of each revised catalogue. (V.A.C.S. Art. 601b, Sec. 3.081(c).)

Sec. 2157.067. CATALOGUE PURCHASING AVAILABLE TO CERTAIN LOCAL GOVERNMENTS. (a) The commission shall make the catalogue purchasing procedure available to a local government that qualifies for cooperative purchasing under Sections 271.082 and 271.083, Local Government Code.

(b) In this section, "local government" has the meaning assigned by Section 271.081, Local Government Code. (V.A.C.S. Art. 601b, Sec. 3.081(g).)

[Sections 2157.068 to 2157.120 reserved for expansion]

#### SUBCHAPTER C. REQUESTS FOR PROPOSALS PURCHASE METHOD

Sec. 2157.121. ACQUISITION THROUGH COMPETITIVE SEALED PROPOSALS. The commission may acquire a telecommunications device, system, or service or an automated information system by using competitive sealed proposals if the commission determines by rule that competitive sealed bidding and informal competitive bidding are not practical or are disadvantageous to the state. (V.A.C.S. Art. 601b, Sec. 3.022(a) (part).)

Sec. 2157.122. SOLICITATION OF PROPOSALS; PUBLIC NOTICE. The commission shall:

- (1) solicit proposals under this subchapter by a request for proposals; and

(2) give public notice of the request in the manner provided for requests for bids under Subchapter B, Chapter 2156. (V.A.C.S. Art. 601b, Sec. 3.022(b).)

Sec. 2157.123. OPENING AND FILING PROPOSALS; PUBLIC INSPECTION. (a) The commission shall avoid disclosing the contents of each proposal on opening the proposal and during negotiations with competing offerors.

(b) The commission shall file each proposal in a register of proposals, which, after a contract is awarded, is open for public inspection unless the register contains information that is excepted from disclosure as an open record under Subchapter C, Chapter 552. (V.A.C.S. Art. 601b, Sec. 3.022(c).)

Sec. 2157.124. DISCUSSION AND REVISION OF PROPOSAL. (a) As provided by a request for proposals and under commission rules, the commission may discuss an acceptable or potentially acceptable proposal with an offeror to assess the offeror's ability to meet the solicitation requirements and shall invite a requisitioning agency to participate in discussions conducted under this section.

(b) After receiving a proposal but before making an award, the commission may permit an offeror to revise a proposal to obtain the best final offer.

(c) The commission may not disclose information derived from a proposal submitted by a competing offeror in conducting discussions under this section.

(d) The commission shall provide each offeror an equal opportunity to discuss and revise proposals. (V.A.C.S. Art. 601b, Secs. 3.022(d), (e).)

Sec. 2157.125. CONTRACT AWARD; FACTORS CONSIDERED. (a) The commission shall make a written award of a purchase or lease to the offeror whose proposal under this subchapter is the most advantageous to the state, considering price and the evaluation factors in the request for proposals.

(b) The commission shall refuse all offers if no offer submitted is acceptable.

(c) In determining whether a proposal under this subchapter is most advantageous to the state, the commission shall consider factors including:

- (1) the installation cost;
- (2) the overall life of the system or equipment;
- (3) the cost of acquisition, operation, and maintenance of hardware included with, associated with, or required for the system or equipment during the state's ownership or lease;
- (4) the cost of acquisition, operation, and maintenance of software included with, associated with, or required for the system or equipment during the state's ownership or lease;
- (5) the estimated cost of supplies;
- (6) the estimated cost of employee training;
- (7) the estimated cost of necessary additional permanent employees; and
- (8) the estimated increase in employee productivity.

(d) The commission shall state in writing in the contract file the reasons for making an award. (V.A.C.S. Art. 601b, Sec. 3.022(f).)

Sec. 2157.126. RULES. The commission shall adopt rules necessary or convenient to perform its responsibilities regarding requests for proposals under this subchapter and shall request assistance from other state agencies as needed. (V.A.C.S. Art. 601b, Sec. 3.022(g).)

[Sections 2157.127 to 2157.180 reserved for expansion]

#### SUBCHAPTER D. PREAPPROVED CONTRACT TERMS AND CONDITIONS

Sec. 2157.181. PREAPPROVED CONTRACT TERMS AND CONDITIONS. (a) The commission, with the concurrence of the Department of Information Resources, may negotiate with vendors preapproved terms and conditions to be included in contracts relating to the purchase or lease of a telecommunication device, system, or service or an automated information system awarded to a vendor by a state agency.

(b) The commission and the department must agree to the wording of preapproved terms and conditions negotiated with a vendor. (V.A.C.S. Art. 601b, Sec. 3.024(a).)

Sec. 2157.182. **VALIDITY OF PREAPPROVED TERMS AND CONDITIONS; RENEGOTIATION.** (a) Preapproved terms and conditions to which a vendor, the commission, and the Department of Information Resources agree are valid for two years after the date of the agreement and must provide that the terms and conditions are to be renegotiated before the end of the two years.

(b) The commission and the Department of Information Resources jointly shall establish procedures to ensure that terms and conditions are renegotiated before they expire in a contract between the vendor and a state agency. (V.A.C.S. Art. 601b, Sec. 3.024(b).)

Sec. 2157.183. **PREAPPROVED TERM OR CONDITION PART OF CONTRACT; CHANGE OF TERM OR CONDITION.** (a) Preapproved terms and conditions must be part of any contract between a state agency and a vendor that has agreed to them.

(b) A preapproved term or condition that is changed remains valid for an existing contract of which it is part but must be renegotiated before it may be part of another or a renewed contract. (V.A.C.S. Art. 601b, Sec. 3.024(c).)

Sec. 2157.184. **NOTIFICATION OF STATE AGENCIES AND VENDORS.** The commission and the Department of Information Resources jointly shall establish procedures to notify state agencies and potential vendors of the provisions of this subchapter regarding preapproved terms and conditions. (V.A.C.S. Art. 601b, Sec. 3.024(d).)

**CHAPTER 2158. PURCHASING: MISCELLANEOUS PROVISIONS  
FOR PURCHASE OF CERTAIN GOODS AND SERVICES**

**SUBCHAPTER A. PURCHASE OF PASSENGER VEHICLES**

- Sec. 2158.001. **WHEELBASE AND HORSEPOWER RESTRICTIONS**
- Sec. 2158.002. **VEHICLES USING ALTERNATIVE FUELS**
- Sec. 2158.003. **PERCENTAGE REQUIREMENTS FOR VEHICLES CAPABLE OF USING ALTERNATIVE FUELS; PROGRAM REVIEW**
- Sec. 2158.004. **DETERMINATION OF ALTERNATIVE FUELS PROGRAM PARAMETERS**
- Sec. 2158.005. **COMPLIANCE WITH APPLICABLE SAFETY STANDARDS**
- Sec. 2158.006. **WHEN VEHICLE CONSIDERED CAPABLE OF USING ALTERNATIVE FUELS**

[Sections 2158.007 to 2158.060 reserved for expansion]

**SUBCHAPTER B. CONTRACT FOR PRINTING LAWS**

- Sec. 2158.061. **AWARD OF CONTRACT FOR PRINTING LAWS**
- Sec. 2158.062. **CONTRACT FOR PRINTING LAWS: TERMS AND CONDITIONS**
- Sec. 2158.063. **CONTRACT FOR PRINTING LAWS: PROOFREADING; ERRORS AND OMISSIONS**
- Sec. 2158.064. **CONTRACT FOR PRINTING LAWS: DIRECTION OF SECRETARY OF STATE; DELIVERY OF COPY**
- Sec. 2158.065. **DISTRIBUTION OF PRINTED LAWS**

[Sections 2158.066 to 2158.120 reserved for expansion]

**SUBCHAPTER C. OTHER CONTRACTS FOR PRINTING SERVICES**

- Sec. 2158.121. **PROHIBITION APPLICABLE TO OTHER PRINTING CONTRACTS; OFFENSE; PENALTY**
- Sec. 2158.122. **EXCEPTION TO PROHIBITION**
- Sec. 2158.123. **STATE PRINTING CONTRACTS**

[Sections 2158.124 to 2158.180 reserved for expansion]

**SUBCHAPTER D. PURCHASE OF ELECTRICAL ITEMS**

- Sec. 2158.181. **SAFETY STANDARDS FOR ELECTRICAL ITEMS**

[Sections 2158.182 to 2158.240 reserved for expansion]

SUBCHAPTER E. RECYCLED PRODUCTS

Sec. 2158.241. INTERSTATE COMPACTS AND COOPERATIVE AGREEMENTS FOR  
PROCURING RECYCLED PRODUCTS

CHAPTER 2158. PURCHASING: MISCELLANEOUS PROVISIONS  
FOR PURCHASE OF CERTAIN GOODS AND SERVICES

SUBCHAPTER A. PURCHASE OF PASSENGER VEHICLES

Sec. 2158.001. WHEELBASE AND HORSEPOWER RESTRICTIONS. (a) A state agency may not purchase or lease a vehicle designed or used primarily for the transportation of individuals, including a station wagon; that has a wheelbase longer than 113 inches or that has more than 160 SAE net horsepower. The vehicle may have a wheelbase of up to 116 inches or SAE net horsepower of up to 280 if the vehicle will be converted so that it is capable of using compressed natural gas or another alternative fuel that results in comparably lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulates. This exception to the wheelbase and horsepower limitations applies to a state agency regardless of the size of the agency's vehicle fleet.

(b) The wheelbase and horsepower limitations prescribed by Subsection (a) do not apply to the purchase or lease of:

- (1) a vehicle to be used primarily for criminal law enforcement;
- (2) a bus, motorcycle, pickup, van, truck, three-wheel vehicle, or tractor; or
- (3) an ambulance. (V.A.C.S. Art. 601b, Sec. 3.29(a), as amended by Chs. 20, 684, Acts 73rd Leg., 1993.)

Sec. 2158.002. VEHICLES USING ALTERNATIVE FUELS. (a) A state agency operating a fleet of more than 15 vehicles, excluding law enforcement and emergency vehicles, may not purchase or lease a motor vehicle unless that vehicle is capable of using compressed natural gas or other alternative fuels that result in comparably lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, particulates, or a combination of those substances.

(b) A state agency may obtain equipment or refueling facilities necessary to operate vehicles using compressed natural gas or other alternative fuels:

- (1) by purchase or lease as authorized by law;
- (2) by gift or loan of the equipment or facilities; or
- (3) by gift or loan of the equipment or facilities or by another arrangement under a service contract for the supply of compressed natural gas or other alternative fuels.

(c) If the equipment or facilities are donated, loaned, or provided through another arrangement with the supplier of compressed natural gas or other alternative fuels, the supplier is entitled to recoup its actual cost of donating, loaning, or providing the equipment or facilities through its fuel charges under the supply contract.

(d) The commission may waive the requirements of this section for a state agency on receipt of certification supported by evidence acceptable to the commission that:

- (1) the agency's vehicles will be operating primarily in an area in which neither the agency nor a supplier has or can reasonably be expected to establish a central refueling station for compressed natural gas or other alternative fuels; or
- (2) the agency is unable to obtain equipment or refueling facilities necessary to operate vehicles using compressed natural gas or other alternative fuels at a projected cost that is reasonably expected to be no greater than the net costs of continued use of traditional gasoline or diesel fuels measured over the expected useful life of the equipment or facilities supplied. (V.A.C.S. Art. 601b, Sec. 3.29(b).)

Sec. 2158.003. PERCENTAGE REQUIREMENTS FOR VEHICLES CAPABLE OF  
USING ALTERNATIVE FUELS; PROGRAM REVIEW. (a) Not later than September 1,

1996, a state agency that operates a fleet of more than 15 motor vehicles, excluding law enforcement and emergency vehicles, shall have a fleet consisting of vehicles of which at least 50 percent are capable of using compressed natural gas or other alternative fuels.

(b) The Texas Natural Resource Conservation Commission shall review the alternative fuel use program established by this subchapter by December 31, 1996. If the Texas Natural Resource Conservation Commission determines that the program has been effective in reducing total annual emissions from motor vehicles in the area, then after August 31, 1998, a state agency operating a fleet of more than 15 motor vehicles shall have a fleet consisting of vehicles of which at least 90 percent are capable of using compressed natural gas or other alternative fuels.

(c) The commission shall support the Texas Natural Resource Conservation Commission in collecting reasonable information needed to determine the air quality benefits from use of alternative fuels at affected agencies.

(d) A state agency in its annual financial report to the legislature shall report its progress in achieving the percentage requirements of this section by itemizing:

- (1) purchases, leases, and conversions of motor vehicles; and
- (2) usage of compressed natural gas or other alternative fuels.

(e) A state agency may meet the percentage requirements of this section through purchase of new vehicles or the conversion of existing vehicles, in accordance with federal and state requirements and applicable safety laws, to use the alternative fuels.

(f) The commission may reduce a percentage specified by this section or waive the requirements of this section for a state agency on receipt of certification supported by evidence acceptable to the commission that:

- (1) the agency's vehicles will be operating primarily in an area in which neither the agency nor a supplier has or can reasonably be expected to establish a central refueling station for compressed natural gas or other alternative fuels; or
- (2) the agency is unable to obtain equipment or refueling facilities necessary to operate vehicles using compressed natural gas or other alternative fuels at a projected cost that is reasonably expected to be no greater than the net costs of continued use of traditional gasoline or diesel fuels measured over the expected useful life of the equipment or facilities supplied. (V.A.C.S. Art. 601b, Secs. 3.29(c), (d) (part), (e).)

Sec. 2158.004. **DETERMINATION OF ALTERNATIVE FUELS PROGRAM PARAMETERS.** In developing the compressed natural gas or other alternative fuels use program, the commission should work with state agency fleet operators, vehicle manufacturers and converters, fuel distributors, and others to determine the vehicles to be covered, taking into consideration:

- (1) range;
- (2) specialty uses;
- (3) fuel availability;
- (4) vehicle manufacturing and conversion capability;
- (5) safety;
- (6) resale values; and
- (7) other relevant factors. (V.A.C.S. Art. 601b, Sec. 3.29(d) (part).)

Sec. 2158.005. **COMPLIANCE WITH APPLICABLE SAFETY STANDARDS.** In purchasing, leasing, maintaining, or converting vehicles for use with compressed natural gas or other alternative fuels, the commission shall comply with all applicable safety standards adopted by the United States Department of Transportation and the Railroad Commission of Texas. (V.A.C.S. Art. 601b, Sec. 3.29(f).)

Sec. 2158.006. **WHEN VEHICLE CONSIDERED CAPABLE OF USING ALTERNATIVE FUELS.** In this subchapter, a vehicle is considered to be capable of using compressed natural gas or other alternative fuels if the vehicle is capable of using those fuels either in its original equipment engine or in an engine that has been converted to use those fuels. (V.A.C.S. Art. 601b, Sec. 3.29(g) (part).)



[Sections 2158.007 to 2158.060 reserved for expansion]

#### SUBCHAPTER B. CONTRACT FOR PRINTING LAWS

Sec. 2158.061. AWARD OF CONTRACT FOR PRINTING LAWS. (a) The commission shall, at the beginning of each regular session of the legislature, award a contract for printing the general and special laws and resolutions passed by a regular or special session of that legislature.

(b) The commission shall prepare the contract as a separate contract from all other public printing contracts. (V.A.C.S. Art. 601b, Sec. 3.25(a) (part).)

Sec. 2158.062. CONTRACT FOR PRINTING LAWS: TERMS AND CONDITIONS. (a) The commission shall include in the contract for printing laws penalties that assure delivery of the printed laws by the time provided in the contract.

(b) The printer shall begin delivery of completed books in a reasonable time after printing is completed and binding is started. The commission shall state the time limit in the commission's call for bids.

(c) On the commission's order, the printer shall print general and special laws in separate volumes. (V.A.C.S. Art. 601b, Sec. 3.25(a) (part).)

Sec. 2158.063. CONTRACT FOR PRINTING LAWS: PROOFREADING; ERRORS AND OMISSIONS. (a) In the contract for printing laws, the commission shall require the printer to:

(1) proofread and correct proofs before submitting them to the state; and

(2) set out in the first volume of the general and special laws passed by each legislature, immediately preceding the laws, a section containing corrections of errors or omissions made in the publication of the general and special laws of preceding legislatures.

(b) The contract term required by Subsection (a)(2) may not require the printer to set out an error or omission in a law passed in a legislative session ending more than five years before the date of the call for bids for the contract.

(c) The secretary of state shall provide the printer with the list of errors and omissions and appropriate corrections on or before the date provided by Section 2158.064 for furnishing the printer a copy of the laws and resolutions passed at the first session of each legislature.

(d) The comptroller may not issue a warrant to the printer in payment for the printing of the laws and resolutions until the printer, if an individual, or the vice president, secretary, or manager if the printer is a corporation, partnership, or association, executes a sworn affidavit verifying compliance with Section 2158.062 and this section. (V.A.C.S. Art. 601b, Sec. 3.25(b).)

Sec. 2158.064. CONTRACT FOR PRINTING LAWS: DIRECTION OF SECRETARY OF STATE; DELIVERY OF COPY. (a) The secretary of state shall direct the compilation and printing of laws and resolutions.

(b) Not later than the 26th day, excluding Sundays, after the date the legislature adjourns, the secretary of state shall furnish the printer all copy for the laws and resolutions, with delivery of the first copy to the printer beginning as bills are signed by the governor.

(c) The secretary of state shall deliver copy for the index to the printer not later than the fifth day after the date the printer has furnished all page proofs of the laws to the secretary of state. (V.A.C.S. Art. 601b, Sec. 3.25(c).)

Sec. 2158.065. DISTRIBUTION OF PRINTED LAWS. The secretary of state shall distribute the printed laws of each session of the legislature as follows:

(1) one copy each to:

(A) the governor;

(B) the lieutenant governor;

(C) the speaker of the house of representatives;

(D) each court of appeals; and

(E) each county law library;

- (2) 10 copies to the Texas Legislative Council;
- (3) 15 copies to the Legislative Reference Library;
- (4) 30 copies to the State Law Library; and
- (5) 60 copies to the Texas State Library. (V.A.C.S. Art. 601b, Sec. 3.25(d).)

[Sections 2158.066 to 2158.120 reserved for expansion]

#### SUBCHAPTER C. OTHER CONTRACTS FOR PRINTING SERVICES

Sec. 2158.121. PROHIBITION APPLICABLE TO OTHER PRINTING CONTRACTS; OFFENSE; PENALTY. (a) Except as otherwise provided by a contract or agreement with the state authorized by this subchapter, a person doing printing under contract for the state commits an offense if the person reproduces, prints, prepares, sells, or furnishes the printing or printed matter, a reprint, reproduction, or copy of the printing or printed matter, or a plate, type, mat, cut, or engraving from which the printing contract was executed, in an amount other than that agreed to be printed and furnished to the state under the contract.

(b) An offense under this section is a misdemeanor punishable by:

- (1) a fine of not less than \$100 or more than \$1,000; and
- (2) confinement in jail for not more than 30 days if the offender is an individual.

(c) Conviction of an agent or employee under this section does not bar conviction of a principal.

(d) This subchapter does not apply to the printing and sale to the public of copies of the general and special laws by the printer of the laws under a contract authorized by Subchapter B. (V.A.C.S. Art. 601b, Secs. 3.25(e); 3.26(a), (d).)

Sec. 2158.122. EXCEPTION TO PROHIBITION. (a) On consent of the commission and the governor, a person may print extra copies of matter printed under a state contract and sell the copies at a price fixed by the commission if in the opinion of the commission and the governor the printed matter should be distributed in this manner for the benefit of the public.

(b) A contract for the printing and sale of extra copies under this section must be approved by the attorney general. (V.A.C.S. Art. 601b, Sec. 3.26(c).)

Sec. 2158.123. STATE PRINTING CONTRACTS. In this chapter and Chapters 2155, 2156, and 2157, printing is considered to be performed for the state if the printing is done under contract for:

- (1) the legislature, including either house of the legislature;
- (2) a state department, board, or commission;
- (3) a court;
- (4) an officer or agent of the state; or
- (5) the state. (V.A.C.S. Art. 601b, Sec. 3.26(b).)

[Sections 2158.124 to 2158.180 reserved for expansion]

#### SUBCHAPTER D. PURCHASE OF ELECTRICAL ITEMS

Sec. 2158.181. SAFETY STANDARDS FOR ELECTRICAL ITEMS. The commission or another state agency may not purchase an electrical item unless the item meets applicable safety standards of the federal Occupational Safety and Health Administration. (V.A.C.S. Art. 601b, Sec. 3.32.)

[Sections 2158.182 to 2158.240 reserved for expansion]

#### SUBCHAPTER E. RECYCLED PRODUCTS

Sec. 2158.241. INTERSTATE COMPACTS AND COOPERATIVE AGREEMENTS FOR PROCURING RECYCLED PRODUCTS. The commission shall enter into compacts

and cooperative agreements with other states and government entities for procuring products made of recycled materials. (V.A.C.S. Art. 601b, Sec. 11.07.)

[Chapters 2159 to 2160 reserved for expansion]

**CHAPTER 2161. HISTORICALLY UNDERUTILIZED BUSINESSES**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 2161.001. DEFINITIONS**

**Sec. 2161.002. COMMISSION ADMINISTRATION; COMPTROLLER ASSISTANCE**

[Sections 2161.003 to 2161.060 reserved for expansion]

**SUBCHAPTER B. GENERAL POWERS AND DUTIES OF COMMISSION**

**Sec. 2161.061. CERTIFICATION OF HISTORICALLY UNDERUTILIZED BUSINESSES**

**Sec. 2161.062. ASSISTANCE TO HISTORICALLY UNDERUTILIZED BUSINESSES**

**Sec. 2161.063. ASSISTING STATE AGENCIES**

**Sec. 2161.064. DIRECTORY**

[Sections 2161.065 to 2161.120 reserved for expansion]

**SUBCHAPTER C. PLANNING AND REPORTING REQUIREMENTS**

**Sec. 2161.121. COMMISSION REPORT OF CONTRACTS AWARDED TO HISTORICALLY UNDERUTILIZED BUSINESSES**

**Sec. 2161.122. INFORMATION GATHERING BY STATE AGENCY**

**Sec. 2161.123. STRATEGIC PLANNING**

**Sec. 2161.124. STATE AGENCY PROGRESS REPORTS**

**Sec. 2161.125. CATEGORIZATION BY SEX, RACE, AND ETHNICITY**

[Sections 2161.126 to 2161.180 reserved for expansion]

**SUBCHAPTER D. PURCHASING GOALS**

**Sec. 2161.181. GOALS FOR PURCHASES OF GOODS AND SERVICES**

**Sec. 2161.182. GOALS FOR CONSTRUCTION CONTRACTS**

**Sec. 2161.183. ESTIMATE OF EXPECTED CONTRACT AWARDS**

[Sections 2161.184 to 2161.230 reserved for expansion]

**SUBCHAPTER E. PENALTY**

**Sec. 2161.231. PENALTY**

**CHAPTER 2161. HISTORICALLY UNDERUTILIZED BUSINESSES**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 2161.001. DEFINITIONS.** In this chapter:

(1) "Goods" means supplies, materials, or equipment.

(2) "Historically underutilized business" means:

(A) a corporation formed for the purpose of making a profit in which 51 percent or more of all classes of the shares of stock or other equitable securities are owned by one or more socially disadvantaged persons who have a proportionate interest and actively participate in the corporation's control, operation, and management;

(B) a sole proprietorship created for the purpose of making a profit that is completely owned, operated, and controlled by a socially disadvantaged person;

(C) a partnership formed for the purpose of making a profit in which 51 percent or more of the assets and interest in the partnership are owned by one or more socially

disadvantaged persons who have a proportionate interest and actively participate in the partnership's control, operation, and management;

(D) a joint venture in which each entity in the venture is a historically underutilized business, as determined under another paragraph of this subdivision; or

(E) a supplier contract between a historically underutilized business as determined under another paragraph of this subdivision and a prime contractor under which the historically underutilized business is directly involved in the manufacture or distribution of the goods or otherwise warehouses and ships the goods.

(3) "Socially disadvantaged person" means a person who is socially disadvantaged because of the person's identification as a member of a certain group, including Black Americans, Hispanic Americans, women, Asian Pacific Americans, and Native Americans, and who has suffered the effects of discriminatory practices or other similar insidious circumstances over which the person has no control. (V.A.C.S. Art. 601b, Sec. 1.02(3); New.)

Sec. 2161.002. COMMISSION ADMINISTRATION; COMPTROLLER ASSISTANCE.

(a) To administer Subchapters B and C, the commission may:

- (1) require information from a state agency; and
- (2) adopt rules.

(b) The comptroller shall provide information to the commission that will assist the commission in performing its duties under Subchapters B and C. (V.A.C.S. Art. 601b, Sec. 1.03(c) (part).)

[Sections 2161.003 to 2161.060 reserved for expansion]

#### SUBCHAPTER B. GENERAL POWERS AND DUTIES OF COMMISSION

Sec. 2161.061. CERTIFICATION OF HISTORICALLY UNDERUTILIZED BUSINESSES. (a) The commission shall certify historically underutilized businesses.

(b) As one of its certification procedures, the commission may:

- (1) approve a municipal program that certifies historically underutilized businesses under substantially the same definition used by Section 2161.001; and
- (2) certify a business certified under the municipal program as a historically underutilized business under this chapter. (V.A.C.S. Art. 601b, Sec. 1.03(a).)

Sec. 2161.062. ASSISTANCE TO HISTORICALLY UNDERUTILIZED BUSINESSES.

(a) The commission shall seek the advice of the governor, legislature, and state agencies in identifying and developing opportunities for historically underutilized businesses.

(b) The commission shall offer historically underutilized businesses assistance and training regarding state procurement procedures.

(c) The commission shall advise historically underutilized businesses of available state contracts and shall advise historically underutilized businesses to apply for registration on the commission's master bidders list. (V.A.C.S. Art. 601b, Secs. 1.03(i), (j).)

Sec. 2161.063. ASSISTING STATE AGENCIES. (a) The commission shall encourage state agencies to use historically underutilized businesses by:

- (1) working with state agencies to establish a statewide policy for increasing the use of historically underutilized businesses;
- (2) assisting state agencies in seeking historically underutilized businesses capable of supplying required goods or services;
- (3) assisting state agencies in identifying and advising historically underutilized businesses on the types of goods and services the agencies need; and
- (4) assisting state agencies in increasing the amount of business placed with historically underutilized businesses.

(b) The commission shall assist the Texas Department of Commerce in performing the department's duties under Section 481.103. (V.A.C.S. Art. 601b, Secs. 1.03(o), (p).)

Sec. 2161.064. **DIRECTORY.** (a) The commission shall compile, in the most cost-efficient form, a directory of businesses certified as historically underutilized businesses under Section 2161.061.

(b) The commission at least semiannually shall update the directory and provide a copy of the directory to each state agency.

(c) Depending on the needs of a state agency, the commission shall provide access to the directory electronically or in another form.

(d) The commission shall provide a copy of the directory to every municipality in January and July of each year. On request, the commission shall make the directory available to other local governments and the public.

(e) A state agency, including the commission, shall use the directory in determining awards of state purchasing and public works contracts. (V.A.C.S. Art. 601b, Secs. 1.03(b), (e) as added by Sec. 8, Ch. 749, Acts 73rd Leg., 1993.)

[Sections 2161.065 to 2161.120 reserved for expansion]

#### SUBCHAPTER C. PLANNING AND REPORTING REQUIREMENTS

Sec. 2161.121. **COMMISSION REPORT OF CONTRACTS AWARDED TO HISTORICALLY UNDERUTILIZED BUSINESSES.** (a) The commission shall prepare a consolidated report that:

(1) includes the number and dollar amount of contracts awarded and paid to historically underutilized businesses certified by the commission; and

(2) analyzes the relative level of opportunity for historically underutilized businesses for various categories of acquired goods and services.

(b) Each state agency shall send to the commission information required by Section 2161.122 and the commission for the preparation of the commission's report not later than March 15 and September 15 of each year.

(c) The commission shall base its report on the compilation and analysis of reports received under Subsection (b) and information received from the comptroller.

(d) The commission shall send on April 15 of each year a report on the previous six-month period to the joint committee charged with monitoring the implementation of the historically underutilized business goals.

(e) The commission shall send on October 15 of each year a report on the preceding fiscal year to the presiding officer of each house of the legislature, the members of the legislature, and the joint committee. (V.A.C.S. Art. 601b, Secs. 1.03(c) (part), (h).)

Sec. 2161.122. **INFORMATION GATHERING BY STATE AGENCY.** (a) To ensure accuracy in reporting, a state agency shall maintain and compile monthly information relating to the use by the agency and each of its operating divisions of historically underutilized businesses, including information regarding subcontractors and suppliers required by Subsection (b).

(b) A contractor or supplier awarded a contract by a state agency shall report to the agency the identity of each historically underutilized business to whom the contractor or supplier awarded a subcontract for the purchase of goods or services.

(c) A state agency participating in a group purchasing program described under Section 2155.139(b) shall send to the commission in the agency's report under Section 2161.121 a separate list of purchases from historically underutilized businesses that are made through the group purchasing program, including the dollar amount of each purchase allocated to the reporting agency.

(d) A state agency's report is a record of the agency's purchases for which the agency selected the vendor. If the vendor was selected by the commission as part of its state contract program, the commission shall include the purchase in the commission's report of its own purchases unless the commission made a sole source purchase for the agency under Section 2155.067. The state agency for which the purchase was made shall report the

selection of the vendor on its report as if the agency selected the vendor when the agency drew specifications for goods or services that are proprietary to one vendor. (V.A.C.S. Art. 601b, Secs. 1.03(d), (e) as added by Sec. 3, Ch. 684, Acts 73rd Leg., 1993, (f), (k).)

Sec. 2161.123. STRATEGIC PLANNING. (a) Each state agency, including the commission, shall prepare as part of its strategic plan under Chapter 2056 a written plan for increasing the agency's use of historically underutilized businesses in purchasing and public works contracting.

(b) The plan must include:

(1) a policy or mission statement relating to increasing the use of historically underutilized businesses by the state agency;

(2) goals to be met by the agency in carrying out the policy or mission; and

(3) specific programs to be conducted by the agency to meet the goals stated in the plan, including a specific program to encourage contractors to use historically underutilized businesses as partners and subcontractors.

(c) On request, the commission shall provide technical assistance to a state agency that is preparing its plan. (V.A.C.S. Art. 601b, Sec. 1.03(f).)

Sec. 2161.124. STATE AGENCY PROGRESS REPORTS. (a) Each state agency, including the commission, shall prepare a report for each fiscal year documenting progress under its plan for increasing use of historically underutilized businesses.

(b) The commission, in cooperation with the state auditor, shall develop a standard form for the report.

(c) The state agency shall file the report with the governor, lieutenant governor, and the speaker of the house of representatives not later than December 31 of each year. (V.A.C.S. Art. 601b, Secs. 1.03(m), (n).)

Sec. 2161.125. CATEGORIZATION BY SEX, RACE, AND ETHNICITY. The commission, in cooperation with the comptroller and each state agency reporting under this subchapter, shall categorize each historically underutilized business included in a report under this subchapter by sex, race, and ethnicity. (V.A.C.S. Art. 601b, Sec. 1.03(g).)

[Sections 2161.126 to 2161.180 reserved for expansion]

#### SUBCHAPTER D. PURCHASING GOALS

Sec. 2161.181. GOALS FOR PURCHASES OF GOODS AND SERVICES. A state agency, including the commission, shall make a good faith effort to assist historically underutilized businesses to receive not less than 30 percent of the total value of all contract awards for the purchase of goods or services that the agency expects to make during a fiscal year. (V.A.C.S. Art. 601b, Sec. 3.10(b) (part).)

Sec. 2161.182. GOALS FOR CONSTRUCTION CONTRACTS. (a) A state agency that contracts for a construction project, including a project under Section 2166.003, shall make a good faith effort to assist historically underutilized businesses to receive not less than 30 percent of the total value of each construction contract award that the agency expects to make during a fiscal year.

(b) In this section, "project" has the meaning assigned by Section 2166.001. (V.A.C.S. Art. 601b, Sec. 5.36 (part); New.)

Sec. 2161.183. ESTIMATE OF EXPECTED CONTRACT AWARDS. (a) Not later than the 60th day of its fiscal year, a state agency, including the commission:

(1) shall estimate the total value of contract awards the agency expects to make for that fiscal year that are subject to Section 2161.181; and

(2) shall estimate the total value of contract awards the agency expects to make for that fiscal year under Chapter 2166.

(b) The state agency may revise an estimate as new information requires. (V.A.C.S. Art. 601b, Secs. 3.10(b) (part), 5.36 (part).)

[Sections 2161.184 to 2161.230 reserved for expansion]

**SUBCHAPTER E. PENALTY**

**Sec. 2161.231. PENALTY.** (a) A person commits an offense if the person:

(1) intentionally applies as a historically underutilized business for an award of a purchasing contract or public works contract under this subtitle; and

(2) knows the person is not a historically underutilized business.

(b) An offense under this section is a third degree felony. (V.A.C.S. Art. 601b, Sec. 1.04.)

**CHAPTER 2162. STATE COUNCIL ON COMPETITIVE GOVERNMENT**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 2162.001. DEFINITION**

**Sec. 2162.002. COMPETITION, INNOVATION, AND CREATIVITY IN STATE SERVICES**

[Sections 2162.003 to 2162.050 reserved for expansion]

**SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

**Sec. 2162.051. COMPOSITION OF COUNCIL**

**Sec. 2162.052. MEETINGS**

[Sections 2162.053 to 2162.100 reserved for expansion]

**SUBCHAPTER C. GENERAL POWERS AND DUTIES**

**Sec. 2162.101. GENERAL POWERS**

**Sec. 2162.102. SELECTION OF SERVICE PROVIDER THROUGH COMPETITION**

**Sec. 2162.103. COST COMPARISON AND CONTRACT CONSIDERATIONS**

**Sec. 2162.104. DUTIES OF AFFECTED STATE AGENCIES**

**Sec. 2162.105. EXEMPTION FROM PURCHASING LAWS**

**CHAPTER 2162. STATE COUNCIL ON COMPETITIVE GOVERNMENT**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 2162.001. DEFINITION.** In this chapter, "council" means the State Council on Competitive Government. (V.A.C.S. Art. 601b, Sec. 15.01(2).)

**Sec. 2162.002. COMPETITION, INNOVATION, AND CREATIVITY IN STATE SERVICES.** The state shall encourage competition, innovation, and creativity among service providers to improve the quality of the state's services. (V.A.C.S. Art. 601b, Sec. 15.02 (part).)

[Sections 2162.003 to 2162.050 reserved for expansion]

**SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

**Sec. 2162.051. COMPOSITION OF COUNCIL.** (a) The State Council on Competitive Government consists of the following individuals or the individuals they designate:

(1) the governor;

(2) the lieutenant governor;

(3) the comptroller;

(4) the speaker of the house of representatives;

(5) the commission's presiding officer; and

(6) the commissioner of the Texas Employment Commission representing labor.

(b) The governor is the presiding officer of the council.

(c) If the speaker of the house of representatives is not permitted by the constitution to serve as a voting member of the council, the speaker serves as a nonvoting member. (V.A.C.S. Art. 601b, Secs. 15.02 (part), 15.03.)

Sec. 2162.052. MEETINGS. (a) The council shall meet as often as necessary to perform its duties.

(b) The council is subject to:

(1) the open meetings law, Chapter 551; and

(2) the open records law, Chapter 552. (V.A.C.S. Art. 601b, Secs. 15.04, 15.10.)

[Sections 2162.053 to 2162.100 reserved for expansion]

#### SUBCHAPTER C. GENERAL POWERS AND DUTIES

Sec. 2162.101. GENERAL POWERS. In performing its duties under this chapter, the council may:

(1) adopt a rule governing any aspect of the council's duties or responsibilities;

(2) hold a public hearing or conduct a study; and

(3) consult a private commercial source. (V.A.C.S. Art. 601b, Sec. 15.06 (part).)

Sec. 2162.102. SELECTION OF SERVICE PROVIDER THROUGH COMPETITION. (a) The council shall identify commercially available services being performed by state agencies and study the services to determine if they may be better provided by selecting the service providers through competition with other state agency providers of the services or private commercial sources.

(b) If the council determines that a service identified under Subsection (a) may be better provided by selecting the service provider through competition, the council shall require the state agency providing the service to engage in any process, including competitive bidding, developed by the council to select a service provider through competition with other state agency providers of the service or private commercial sources.

(c) In performing its duties under this chapter, the council may:

(1) require a state agency to conduct a hearing, study, review, or cost estimate, including an agency in-house cost estimate or a management study, concerning any aspect of a service identified under Subsection (a);

(2) develop and require state agencies to use methods to accurately and fairly estimate and account for the cost of providing a service identified under Subsection (a);

(3) require that a service identified under Subsection (a) be submitted to competitive bidding or another process that creates competition with private commercial sources;

(4) prescribe, after consulting affected state agencies, the specifications and conditions of purchase procedures that must be followed by the commission and a state agency or a private commercial source engaged in competitive bidding to provide a service identified under Subsection (a);

(5) award a contract to a state agency providing the service, another state agency, a private commercial source, or a combination of those entities, if the bidder presents the best and most reasonable bid, which is not necessarily the lowest bid; and

(6) determine the terms of a contract for service or interagency contract to provide a service identified under Subsection (a). (V.A.C.S. Art. 601b, Secs. 15.01(3), 15.05, 15.06 (part).)

Sec. 2162.103. COST COMPARISON AND CONTRACT CONSIDERATIONS. (a) In comparing the cost of providing a service, the council shall consider the:

(1) cost of supervising the work of a private contractor; and

(2) cost of a state agency's performance of the service, including:



(A) the costs of the comptroller, treasurer, attorney general, and other support agencies; and

(B) other indirect costs related to the agency's performance of the service.

(b) A bid or contract must include an analysis of health care benefits, retirement, and workers' compensation insurance for a contractor's employees that are reasonably comparable to the health care benefits, retirement, and workers' compensation insurance of the state. (V.A.C.S. Art. 601b, Sec. 15.07.)

Sec. 2162.104. DUTIES OF AFFECTED STATE AGENCIES. A state agency shall perform an activity required by the council in performing its duties or exercising its powers under this chapter. (V.A.C.S. Art. 601b, Sec. 15.08.)

Sec. 2162.105. EXEMPTION FROM PURCHASING LAWS. A contract by the council or a decision regarding whether a state agency is required to engage in competitive bidding is exempt from another state law regulating or limiting state purchasing or a purchasing decision. (V.A.C.S. Art. 601b, Sec. 15.09.)

[Chapters 2163 to 2164 reserved for expansion]

#### CHAPTER 2165. STATE BUILDINGS, GROUNDS, AND PROPERTY

##### SUBCHAPTER A. CHARGE AND CONTROL OF STATE BUILDINGS AND PROPERTY

Sec. 2165.001. CUSTODIANSHIP OF STATE PROPERTY

Sec. 2165.002. EXCEPTIONS TO COMMISSION CHARGE AND CONTROL

Sec. 2165.003. ALLOCATION OF SPACE AFFECTING LEGISLATURE

Sec. 2165.004. LEASE OF SPACE TO PUBLIC TENANTS IN CERTAIN STATE-OWNED BUILDINGS

Sec. 2165.005. NAMING OF STATE BUILDINGS

[Sections 2165.006 to 2165.050 reserved for expansion]

##### SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION

Sec. 2165.051. INSPECTION OF STATE PROPERTY

Sec. 2165.052. REPAIR AND IMPROVEMENT OF STATE BUILDINGS

Sec. 2165.053. MAINTENANCE OF SEWERS AND UTILITY CONDUITS

Sec. 2165.054. PLANS OF STATE BUILDINGS

Sec. 2165.055. REPORT ABOUT IMPROVEMENTS AND REPAIRS

Sec. 2165.056. POWERS IN RELATION TO OTHER AGENCY PROPERTY

[Sections 2165.057 to 2165.100 reserved for expansion]

##### SUBCHAPTER C. ALLOCATION OF SPACE

Sec. 2165.101. APPLICABILITY OF SUBCHAPTER

Sec. 2165.102. COMMISSION STANDARDS FOR SPACE

Sec. 2165.103. CHILD CARE DEVELOPMENT BOARD STANDARDS

Sec. 2165.104. SPACE USE STUDY; LIMITATION ON ALLOCATION OF SPACE

Sec. 2165.105. STATE AGENCY REQUEST FOR SPACE; COMMISSION DETERMINATIONS

Sec. 2165.106. SHARING SPACE

Sec. 2165.107. PREFERENCES IN ASSIGNING SPACE

Sec. 2165.108. RULES

[Sections 2165.109 to 2165.150 reserved for expansion]

##### SUBCHAPTER D. LEASE OF PUBLIC GROUNDS

Sec. 2165.151. AUTHORITY TO LEASE PUBLIC GROUNDS

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Sec. 2165.155. APPROVAL BY ATTORNEY GENERAL

- Sec. 2165.156. DEPOSIT OF LEASE PROCEEDS
- Sec. 2165.157. FORMS, RULES, AND CONTRACTS
- Sec. 2165.158. REJECTION OF BIDS

[Sections 2165.159 to 2165.200 reserved for expansion]

SUBCHAPTER E. LEASE OF SPACE IN STATE-OWNED  
BUILDINGS TO PRIVATE TENANTS

- Sec. 2165.201. PURPOSE OF SUBCHAPTER
- Sec. 2165.202. APPLICABILITY
- Sec. 2165.203. LEASE; FAIR MARKET VALUE
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- Sec. 2165.205. LIMITATIONS ON AMOUNT, LOCATION, AND USE OF LEASED SPACE
- Sec. 2165.206. LEASE OF SPACE FOR CHILD CARE FACILITY
- Sec. 2165.207. METHOD OF SELECTING TENANT
- Sec. 2165.208. UTILITIES AND CUSTODIAL SERVICES
- Sec. 2165.209. SUBLEASES AND ASSIGNMENTS
- Sec. 2165.210. REFUSAL TO LEASE SPACE OR PERMIT AN ACTIVITY
- Sec. 2165.211. USE OF LEASE PROCEEDS
- Sec. 2165.212. VENDING FACILITIES; TEXAS COMMISSION FOR THE BLIND
- Sec. 2165.213. AD VALOREM TAXATION
- Sec. 2165.214. PREFERENCE IN LEASING TO CERTAIN EXISTING VENDING FACILITIES
- Sec. 2165.215. PURCHASE OF BUILDING SUBJECT TO EXISTING LEASES

[Sections 2165.216 to 2165.250 reserved for expansion]

SUBCHAPTER F. PARTICULAR BUILDINGS AND PROPERTY

- Sec. 2165.251. OLD STATE BOARD OF INSURANCE BUILDING
- Sec. 2165.252. TEXAS JUDICIAL COMPLEX
- Sec. 2165.253. USE OF ROOM IN STATE CAPITOL BUILDING
- Sec. 2165.254. STATE CAPITOL BUILDING: SAFE PLACE FOR RUNAWAY YOUTH DESIGNATION
- Sec. 2165.255. CONSENT OF LEGISLATURE REQUIRED FOR CONSTRUCTION ON STATE CAPITOL GROUNDS; PENALTY
- Sec. 2165.256. STATE CEMETERY AND OTHER BURIAL GROUNDS
- Sec. 2165.257. FRENCH EMBASSY
- Sec. 2165.258. OFFICE SPACE FOR DEPARTMENT OF PUBLIC SAFETY; AMERICAN LEGION BUILDING

CHAPTER 2165. STATE BUILDINGS, GROUNDS, AND PROPERTY

SUBCHAPTER A. CHARGE AND CONTROL OF  
STATE BUILDINGS AND PROPERTY

- Sec. 2165.001. CUSTODIANSHIP OF STATE PROPERTY. (a) The commission:
  - (1) has charge and control of all state buildings, grounds, and property;
  - (2) is the custodian of all state personal property; and
  - (3) is responsible for the proper care and protection of state property from damage, intrusion, or improper use.
- (b) The commission may:
  - (1) allocate space in a state building to the departments of state government for uses authorized by law; and
  - (2) make repairs to a state building necessary to accommodate uses of the space in the building. (V.A.C.S. Art. 601b, Sec. 4.01(a).)

Sec. 2165.002. **EXCEPTIONS TO COMMISSION CHARGE AND CONTROL.** The provisions of Section 2165.001 relating to charge and control of state buildings and grounds do not apply to buildings and grounds of:

- (1) an institution of higher education, as defined by Section 61.003, Education Code;
- (2) a state agency to which control has been specifically committed by law; and
- (3) a state agency:

(A) that has demonstrated ability and competence to maintain and control its buildings and grounds; and

(B) to which the commission delegates that authority. (V.A.C.S. Art. 601b, Sec. 4.01(c).)

Sec. 2165.003. **ALLOCATION OF SPACE AFFECTING LEGISLATURE.** The allocation of space affecting the quarters of either house of the legislature must have the approval of the speaker of the house of representatives or the lieutenant governor. The required approval is for the quarters allocated to the affected house. (V.A.C.S. Art. 601b, Sec. 4.01(b).)

Sec. 2165.004. **LEASE OF SPACE TO PUBLIC TENANTS IN CERTAIN STATE-OWNED BUILDINGS.** (a) The commission may enter into a lease agreement with a department, commission, board, agency, or other instrumentality of the state, a political subdivision of the state, or the federal government or its instrumentalities for space in an office building subject to Chapter 2166. Except as provided by Subchapter E or other law, the commission may not lease space in the building to an individual, private corporation, association, partnership, or other private interest.

(b) The commission may adopt rules necessary to implement this section. (V.A.C.S. Art. 601b, Sec. 5.10(b); New.)

Sec. 2165.005. **NAMING OF STATE BUILDINGS.** (a) This section prescribes the procedure for naming a building owned by the state, including a building financed under the Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes).

(b) The commission shall submit names proposed for a new state building, or proposals to rename an existing state building, to the presiding officers of the house of representatives and the senate.

(c) The name proposed by the commission for a state building may be approved and authorized only by concurrent resolution passed by the legislature and signed by the governor.

(d) A building, other than a university building or a prison, may bear the name of a person only if the person is deceased and was significant in the state's history. (V.A.C.S. Art. 601b, Sec. 4.081.)

[Sections 2165.006 to 2165.050 reserved for expansion]

#### SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION

Sec. 2165.051. **INSPECTION OF STATE PROPERTY.** (a) The commission shall frequently and at regular intervals inspect all state buildings and property to remain constantly informed of the condition of the buildings and property.

(b) The commission may inspect the buildings, property in the buildings, and other property under the State Preservation Board's control only at the board's request. The commission shall report to the board the results of an inspection. Restoration and repairs may be made only:

- (1) at the board's direction; and
- (2) by a contractor or agency chosen by the board. (V.A.C.S. Art. 601b, Sec. 4.05.)

Sec. 2165.052. **REPAIR AND IMPROVEMENT OF STATE BUILDINGS.** On direction of the commission's attention to a needed improvement or repair of a building or office by the head of a department or office, the commission shall provide for and direct the repair or improvement. (V.A.C.S. Art. 601b, Sec. 4.06.)

Sec. 2165.053. **MAINTENANCE OF SEWERS AND UTILITY CONDUITS.** The commission shall give special attention to the effective maintenance of sewers and utility conduits. (V.A.C.S. Art. 601b, Sec. 4.07.)

Sec. 2165.054. **PLANS OF STATE BUILDINGS.** The commission shall prepare and keep in its offices a copy of the plans of each state building under its charge, and plans of each building's improvements, showing the exact location of all electrical wiring and all water, gas, and sewage pipes. (V.A.C.S. Art. 601b, Sec. 4.08.)

Sec. 2165.055. **REPORT ABOUT IMPROVEMENTS AND REPAIRS.** The commission biennially on December 1st shall report to the governor:

(1) all improvements and repairs that have been made, with an itemized account of receipts and expenditures; and

(2) the condition of all property under its control, with an estimate of needed improvements and repairs. (V.A.C.S. Art. 601b, Sec. 4.09.)

Sec. 2165.056. **POWERS IN RELATION TO OTHER AGENCY PROPERTY.** (a) The commission may, at a state agency's request, exercise the powers and duties given to the commission by this subchapter and Subchapters A, D, E, and F on or with respect to any property owned or leased by the state.

(b) Services provided by the commission under this section are not subject to Chapter 771.

(c) The commission shall establish a system of charges for providing services under this section to assure recovery of the cost of providing the services and shall submit a purchase voucher or journal voucher after the close of each month to agencies for which services were performed. (V.A.C.S. Art. 601b, Sec. 4.16.)

[Sections 2165.057 to 2165.100 reserved for expansion]

#### SUBCHAPTER C. ALLOCATION OF SPACE

Sec. 2165.101. **APPLICABILITY OF SUBCHAPTER.** This subchapter applies only to space to which, under Section 2167.001, Chapter 2167 applies. (New.)

Sec. 2165.102. **COMMISSION STANDARDS FOR SPACE.** The commission shall adopt standards regarding state agencies':

(1) use of space; and

(2) needs for space, including types of space needed. (V.A.C.S. Art. 601b, Sec. 6.02(c) (part).)

Sec. 2165.103. **CHILD CARE DEVELOPMENT BOARD STANDARDS.** (a) The Child Care Development Board by rule shall adopt standards regarding the type, size, and location of child care services that may be needed by a state agency based on an agency's location and employee demographics.

(b) The commission shall apply standards adopted by the board under this section in fulfilling the commission's responsibilities relating to the establishment of child care facilities. (V.A.C.S. Art. 601b, Sec. 6.02(c) (part).)

Sec. 2165.104. **SPACE USE STUDY; LIMITATION ON ALLOCATION OF SPACE.** (a) The commission periodically shall study the space requirements of state agencies that occupy space under the commission's charge and control, including state-owned space and space leased from other sources.

(b) The commission shall use the results of the study to:

(1) determine the optimal amount of space required for various state agency uses; and

(2) allocate space to state agencies in the best and most efficient manner possible.

(c) To the extent possible without sacrificing critical public or client services, the commission may not allocate usable office space, as defined by the commission, to a state agency under Article I or II of the General Appropriations Act in an amount that exceeds an average of 153 square feet per agency employee for each agency site. This subsection does not apply to:

- (1) an agency site at which fewer than 16 employees are located;
  - (2) warehouse space;
  - (3) laboratory space;
  - (4) storage space exceeding 1,000 gross square feet;
  - (5) library space;
  - (6) space for hearing rooms used to conduct hearings required under the administrative procedure law, Chapter 2001; or
  - (7) another type of space specified by commission rule, if the commission determines that it is not practical to apply this subsection to that space.
- (d) The commission shall conduct a study under this section at least once each state fiscal biennium.
- (e) This section does not apply to space that is not occupied by a state agency as defined by Section 2151.002. (V.A.C.S. Art. 601b, Sec. 6.021.)

Sec. 2165.105. **STATE AGENCY REQUEST FOR SPACE; COMMISSION DETERMINATIONS.** (a) The head of a state agency or that person's designee shall send to the commission a written request for space the agency needs to perform its functions. A state agency may consider the need of its employees for child care services in its request for space.

(b) After consulting the state agency regarding the amount and type of space requested, the commission shall determine:

- (1) whether a need for the space exists; and
- (2) specifications for needed space. (V.A.C.S. Art. 601b, Secs. 6.02(a), (b).)

Sec. 2165.106. **SHARING SPACE.** The commission may:

- (1) consolidate requests for space of two or more state agencies with similar needs; and
- (2) obtain and allocate space so that it is shared by the agencies. (V.A.C.S. Art. 601b, Sec. 6.03.)

Sec. 2165.107. **PREFERENCES IN ASSIGNING SPACE.** (a) In filing a request for space, the commission shall give preference to available state-owned space.

(b) In assigning office space in a state building financed from bond proceeds, the commission shall give first priority to a state agency that is not funded from general revenue. (V.A.C.S. Art. 601b, Sec. 6.04.)

Sec. 2165.108. **RULES.** The commission shall adopt rules necessary to administer its functions under this subchapter. (V.A.C.S. Art. 601b, Sec. 6.12.)

[Sections 2165.109 to 2165.150 reserved for expansion]

#### SUBCHAPTER D. LEASE OF PUBLIC GROUNDS

Sec. 2165.151. **AUTHORITY TO LEASE PUBLIC GROUNDS.** All public grounds belonging to the state under the commission's charge and control may be leased for agricultural or commercial purposes. (V.A.C.S. Art. 601b, Sec. 4.02(a) (part).)

Sec. 2165.152. **LEASE OF BUILDING SPACE NOT AFFECTED.** This subchapter does not apply to space in a building that the commission may lease to a private tenant under Subchapter E. (V.A.C.S. Art. 601b, Sec. 4.02(c).)

Sec. 2165.153. **ADVERTISEMENT OF LEASE PROPOSALS.** The commission shall advertise a lease proposal under this subchapter once a week for four consecutive weeks in at least two newspapers, one of which is published in the municipality in which the property is located or in the daily paper nearest to the property, and the other of which has statewide circulation. (V.A.C.S. Art. 601b, Sec. 4.02(a) (part).)

Sec. 2165.154. **COMMENT BY GENERAL LAND OFFICE.** (a) Not later than the 30th day before the date the commission executes a lease under this subchapter, the commission shall send the lease proposal to the asset management division of the General Land Office.

(b) Before the lease is executed, the asset management division shall send written comments to the commission about the lease. The commission shall consider the comments before executing the lease. (V.A.C.S. Art. 601b, Sec. 4.02(a) (part).)

Sec. 2165.155. APPROVAL BY ATTORNEY GENERAL. Each lease under this subchapter is subject to the approval of the attorney general regarding both substance and form. (V.A.C.S. Art. 601b, Sec. 4.02(a) (part).)

Sec. 2165.156. DEPOSIT OF LEASE PROCEEDS. Money received from a lease under this subchapter, minus the amount spent for advertising and leasing expenses, shall be deposited:

(1) in the state treasury to the credit of the general revenue fund; or

(2) if the land leased belongs to an eleemosynary institution for which there is an appropriate special fund, to the credit of the institution in the appropriate special fund. (V.A.C.S. Art. 601b, Sec. 4.02(a) (part).)

Sec. 2165.157. FORMS, RULES, AND CONTRACTS. The commission shall adopt proper forms, rules, and contracts that will in its best judgment protect the interest of the state. (V.A.C.S. Art. 601b, Sec. 4.02(b) (part).)

Sec. 2165.158. REJECTION OF BIDS. The commission may reject any and all bids under this subchapter. (V.A.C.S. Art. 601b, Sec. 4.02(b) (part).)

[Sections 2165.159 to 2165.200 reserved for expansion]

#### SUBCHAPTER E. LEASE OF SPACE IN STATE-OWNED BUILDINGS TO PRIVATE TENANTS

Sec. 2165.201. PURPOSE OF SUBCHAPTER. The purpose of this subchapter is to:

(1) encourage the most efficient use of valuable space in state office buildings and parking garages;

(2) serve the needs of employees and visitors in the buildings;

(3) provide child care services for state employees; and

(4) enhance the social, cultural, and economic environment in and near the buildings. (V.A.C.S. Art. 601b, Sec. 4.15(a) (part).)

Sec. 2165.202. APPLICABILITY. This subchapter applies only to the lease of space in a state-owned building to a private tenant. (New.)

Sec. 2165.203. LEASE; FAIR MARKET VALUE. In a state-owned building that is under the commission's control and that is used primarily for office space or vehicle parking for state government, the commission may lease at fair market value space to private tenants for commercial, cultural, educational, or recreational activities. (V.A.C.S. Art. 601b, Sec. 4.15(b) (part).)

Sec. 2165.204. COMMENT BY GENERAL LAND OFFICE. (a) Not later than the 30th day before the date the commission executes a lease, the commission shall send a copy of the lease to the asset management division of the General Land Office.

(b) Before the lease is executed the asset management division shall send written comments to the commission about the lease. The commission shall consider the comments before executing the lease. (V.A.C.S. Art. 601b, Sec. 4.15(b) (part).)

Sec. 2165.205. LIMITATIONS ON AMOUNT, LOCATION, AND USE OF LEASED SPACE. (a) The commission may not lease space to a private tenant for use as private office space unless the private office space is related and incidental to another commercial, cultural, educational, recreational, or child care activity of the tenant in the building.

(b) Except as provided by this subchapter and Chapter 663, the commission shall determine the amount of space in a building to be allocated to private tenants and the types of activities in which the tenants may engage according to the market for certain activities among employees and visitors in the building and in the vicinity of the building.

(c) Except as provided by Section 2165.215, the amount of space allocated to private tenants may not exceed 15 percent of the total space in the building. Space leased to provide child care services for state employees does not count toward the 15 percent maximum.

(d) If the commission allocates space in a building to a private tenant, it shall encourage the tenant to lease space with street frontage or space in another area of heavy pedestrian activity. (V.A.C.S. Art. 601b, Secs. 4.15(b) (part), (c), (d) (part).)

Sec. 2165.206. LEASE OF SPACE FOR CHILD CARE FACILITY. (a) Providing a site for a child care facility in a state-owned building has first priority over all other uses of a building, except for the purposes essential to the official functions of the agencies housed in the building.

(b) If the commission allocates space for the purpose of providing child care services for state employees, the commission shall designate the use of the space most appropriate for child care at the direction of the Child Care Development Board.

(c) Notwithstanding any other provision of this subtitle, the commission shall lease at a rate set by the Child Care Development Board suitable space in state-owned buildings to child care providers selected by the board, as provided by Chapter 663. (V.A.C.S. Art. 601b, Secs. 4.15(a) (part), (b) (part), (d) (part).)

Sec. 2165.207. METHOD OF SELECTING TENANT. (a) The commission may lease space in a building by negotiating a lease with a tenant or by selecting the tenant through competitive bidding. In either event, the commission shall follow procedures that promote competition and protect the state's interests.

(b) If the space is leased for the purpose of providing child care services for state employees, the Child Care Development Board, in its sole discretion, may select the child care provider through procedures other than competitive bidding. (V.A.C.S. Art. 601b, Sec. 4.15(f).)

Sec. 2165.208. UTILITIES AND CUSTODIAL SERVICES. (a) The commission may furnish utilities and custodial services to a private tenant at cost.

(b) The commission shall furnish utilities and custodial services to a child care provider selected by the Child Care Development Board at cost. (V.A.C.S. Art. 601b, Sec. 4.15(e).)

Sec. 2165.209. SUBLEASES AND ASSIGNMENTS. (a) The commission may permit a private tenant to sublease or assign space that the tenant leases. The commission must approve in writing all subleases and assignments of leases.

(b) If the private tenant is a child care provider, the Child Care Development Board must also approve in writing a sublease or assignment of the lease. (V.A.C.S. Art. 601b, Sec. 4.15(g).)

Sec. 2165.210. REFUSAL TO LEASE SPACE OR PERMIT AN ACTIVITY. The commission may refuse to lease space to a person or to permit an activity in a space if the commission considers the refusal to be in the state's best interests, except that on the Child Care Development Board's selection and approval of suitable space for a child care facility in a state-owned building, the commission may not refuse to lease the space to that child care provider. (V.A.C.S. Art. 601b, Sec. 4.15(h).)

Sec. 2165.211. USE OF LEASE PROCEEDS. Money received from a lease under this subchapter may be used only for building and property services performed by the commission. (V.A.C.S. Art. 601b, Sec. 4.15(i).)

Sec. 2165.212. VENDING FACILITIES; TEXAS COMMISSION FOR THE BLIND. (a) The commission shall request the Texas Commission for the Blind to determine under Section 94.003, Human Resources Code, whether it is feasible to install a vending facility in a building in which the commission intends to lease space to a private tenant, other than a child care provider. If the installation of the facility is feasible, the commission shall permit the installation in accordance with Chapter 94, Human Resources Code.

(b) If a vending facility is installed, the commission may not lease space in the building to a tenant that the commission, after consultation with the Texas Commission for the Blind, determines would be in direct competition with the vending facility.

(c) If the Texas Commission for the Blind determines that the installation of a vending facility is not feasible, the commission shall lease space to at least one private tenant whose activity in the building will be managed by a blind person or by a person with a disability who is not blind. (V.A.C.S. Art. 601b, Sec. 4.15(j).)

Sec. 2165.213. AD VALOREM TAXATION. (a) Space leased to a private tenant is subject to ad valorem taxation in accordance with Section 11.11(d), Tax Code.

(b) The space is not subject to taxation if:

(1) the private tenant would be entitled to an exemption from taxation of the space if the tenant owned the space instead of leasing it; or

(2) the tenant uses the space for a child care facility. (V.A.C.S. Art. 601b, Sec. 4.15(k).)

Sec. 2165.214. PREFERENCE IN LEASING TO CERTAIN EXISTING VENDING FACILITIES. Notwithstanding the other provisions of this subchapter or Chapters 2155, 2156, 2157, and 2158, the commission shall give a preference, when leasing space in a state-owned building for the operation of a vending facility as defined by Chapter 94, Human Resources Code, to an existing lessee, licensee, or contractor who operates a vending facility on the property if:

(1) the existing lessee, licensee, or contractor has operated a vending facility on the property for not less than 10 years;

(2) Chapter 94, Human Resources Code, does not apply to the property;

(3) the commission finds there is a history of quality and reliable service; and

(4) the proposal of the existing lessee, licensee, or contractor for the right to continue operation of the facility is consistent with the historical quality of service and the historical retail pricing structure at the facility. (V.A.C.S. Art. 601b, Sec. 4.15(l).)

Sec. 2165.215. PURCHASE OF BUILDING SUBJECT TO EXISTING LEASES. (a) If the commission determines under Section 2166.452 or 2166.453 that the purchase of an existing building is more advantageous to the state than constructing a new building or continuing to lease space for a state agency, but a purchase of the building would be subject to existing leases to private tenants that exceed 15 percent of the building's total space, the commission may purchase the building subject to existing leases notwithstanding Section 2165.205.

(b) On expiration of a private tenant's existing lease, the commission may renew the lease subject to this subchapter, including Section 2165.205. (V.A.C.S. Art. 601b, Sec. 4.15(m).)

[Sections 2165.216 to 2165.250 reserved for expansion]

#### SUBCHAPTER F. PARTICULAR BUILDINGS AND PROPERTY

Sec. 2165.251. OLD STATE BOARD OF INSURANCE BUILDING. The space in the old State Board of Insurance State Office Building, located on San Jacinto Street between 11th and 12th streets in Austin, is allocated to the legislature and legislative agencies for their use. The presiding officers of each house of the legislature shall jointly allocate space within the building. (V.A.C.S. Art. 601b, Sec. 4.01(b-1).)

Sec. 2165.252. TEXAS JUDICIAL COMPLEX. (a) "Texas Judicial Complex" is the collective name of the Supreme Court Building, the Tom C. Clark State Courts Building, and the Price Daniel, Sr., Building.

(b) The commission may allocate space in buildings in the Texas Judicial Complex only to:

- (1) a court;
- (2) a judicial agency;
- (3) the attorney general's office;
- (4) the Texas Department of Criminal Justice;
- (5) the Texas Youth Commission;
- (6) the Criminal Justice Policy Council;
- (7) the State Commission on Judicial Conduct;



- (8) the State Office of Administrative Hearings;
- (9) the Board of Law Examiners;
- (10) the Council on Sex Offender Treatment;
- (11) building security;
- (12) building maintenance; or

(13) a vending facility operated under Chapter 94, Human Resources Code. (V.A.C.S. Art. 601b, Secs. 4.01(d), 4.082.)

Sec. 2165.253. **USE OF ROOM IN STATE CAPITOL BUILDING.** A person may not use a room, apartment, or office in the State Capitol as a bedroom or for a private purpose. This section does not apply to the offices and living quarters occupied by the lieutenant governor or the speaker of the house of representatives. (V.A.C.S. Art. 601b, Sec. 4.04.)

Sec. 2165.254. **STATE CAPITOL BUILDING: SAFE PLACE FOR RUNAWAY YOUTH DESIGNATION.** The State Capitol is designated a safe place for runaway youth. The commission shall devise a plan to provide services and assistance to runaway youth seeking services at the State Capitol following standards set by national organizations with expertise in services for runaway youth, including the Project Safe Place Program. In this section:

- (1) "Youth" means a person younger than 18 years of age.
- (2) "Safe place" means a place that provides short-term crisis-oriented assistance and services to runaway youth. (V.A.C.S. Art. 601b, Sec. 4.17.)

Sec. 2165.255. **CONSENT OF LEGISLATURE REQUIRED FOR CONSTRUCTION ON STATE CAPITOL GROUNDS; PENALTY.** (a) A person, including a state officer or employee, commits an offense if, without the prior express consent of the legislature, the person:

- (1) builds, erects, or maintains a building, memorial, monument, statue, concession, or other structure on the State Capitol grounds; or
- (2) creates a parking area, or lays additional paving on the State Capitol grounds.
- (b) It is not an offense under Subsection (a) to build or maintain paved access and underground utility installations in the area described by Subsection (a).
- (c) An offense under Subsection (a) is a misdemeanor punishable by:
  - (1) a fine of not less than \$100 or more than \$1,000;
  - (2) confinement in the county jail of Travis County for not more than one year; or
  - (3) both the fine and confinement.

(d) A state officer who is subject to removal from office by impeachment is subject to removal by that method for a violation of Subsection (a). Any other state officer or employee who violates Subsection (a) shall be dismissed immediately from state employment.

(e) In this section, "State Capitol grounds" means the area that surrounded the State Capitol on January 1, 1955, that was bounded by 11th, Brazos, 13th, and Colorado streets, regardless of whether the area was inside or outside the fence that enclosed part of those grounds. (V.A.C.S. Art. 601b, Sec. 4.14.)

Sec. 2165.256. **STATE CEMETERY AND OTHER BURIAL GROUNDS.** (a) The commission shall:

- (1) control, manage, and beautify the grounds of the State Cemetery;
- (2) preserve the grounds of the cemetery and related property; and
- (3) protect the property from depreciation and injury.

(b) The commission shall procure and erect at the head of each grave that does not have a permanent monument a marble obelisk on which shall be engraved the name of the dead buried in the grave.

(c) Persons eligible for burial in the State Cemetery are:

- (1) a former member of the legislature or a member who dies in office;
- (2) a former elective state official or an elective state official who dies in office;

- (3) a former state official or a state official who dies in office who has been appointed by the governor and confirmed by the senate;
- (4) a person specified by a governor's proclamation; and
- (5) a person specified by a concurrent resolution adopted by the legislature.
- (d) Grave spaces are allotted for:
  - (1) a person eligible for burial under Subsection (c);
  - (2) the person's spouse; and
  - (3) the person's unmarried child, if the child, on September 1, 1979, or at the time of the child's death, is a resident in a state eleemosynary institution.
- (e) A child eligible for burial under Subsection (d)(3) must be buried alongside the child's parent or parents.
- (f) A grave plot may not be longer than eight feet nor wider than five feet times the number of persons of one family authorized to be buried alongside one another.
- (g) A monument or statue may not be erected that is taller than a monument or statue that existed in the State Cemetery on September 1, 1979.
- (h) A tree, shrub, or flower may not be planted in the State Cemetery without the commission's written permission.
- (i) A person may be buried on state property only in the State Cemetery or in a cemetery maintained by a state eleemosynary institution. Other state property, including the State Capitol grounds, may not be used as a burial site.
- (j) The commission shall allot and locate the necessary number of grave plots authorized on application made by:
  - (1) the person primarily eligible for burial under Subsection (c);
  - (2) the person's spouse; or
  - (3) the executor or administrator of the person's estate. (V.A.C.S. Art. 601b, Sec. 4.10.)

Sec. 2165.257. FRENCH EMBASSY. (a) The property known as the French Embassy is for the use and purposes of the Daughters of the Republic of Texas. They may take full charge of the building and use it as they consider proper.

(b) The French Embassy is the property of the state, and title to the property remains in the commission's custody. (V.A.C.S. Art. 601b, Sec. 4.11.)

Sec. 2165.258. OFFICE SPACE FOR DEPARTMENT OF PUBLIC SAFETY; AMERICAN LEGION BUILDING. The commission shall provide office space to the Department of Public Safety in the American Legion Building or in another suitable facility acceptable to the department for the Capitol District. (V.A.C.S. Art. 601b, Sec. 4.12.)

#### CHAPTER 2166. BUILDING CONSTRUCTION AND ACQUISITION

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## CHAPTER 2166. BUILDING CONSTRUCTION AND ACQUISITION

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2166.001. DEFINITIONS. In this chapter:

- (1) "Construction" includes acquisition and reconstruction.
  - (2) "Cost of a project" includes the cost of:
    - (A) real estate;
    - (B) other property;
    - (C) rights and easements;
    - (D) utility services;
    - (E) site development;
    - (F) construction and initial furnishing and equipment;
    - (G) architectural, engineering, and legal services;
    - (H) surveys, plans, and specifications; and
    - (I) other costs, including those incurred by the commission, that are necessary or incidental to determining the feasibility or practicability of a project.
  - (3) "Private design professional" means a design professional as described by Subdivisions (6)(A) and (B)(ii).
  - (4) "Project" means a building construction project that is financed wholly or partly by a specific appropriation, a bond issue, or federal money. The term includes the construction of:
    - (A) a building, structure, or appurtenant facility or utility, including the acquisition and installation of original equipment and original furnishings; and
    - (B) an addition to, or alteration, rehabilitation, or repair of, an existing building, structure, or appurtenant facility or utility.
  - (5) "Project analysis" means work done before the legislative appropriation for a project to develop a reliable estimate of the cost of the project to be used in the appropriations request.
  - (6) "Design professional" means an individual registered as an architect under Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), or a person registered as a professional engineer under The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes):
    - (A) who provides professional architectural or engineering services and has overall responsibility for the design of a building construction undertaking; and
    - (B) who:
      - (i) is employed on a salary basis; or
      - (ii) is in private practice and is retained for a specific project under a contract with the commission.
  - (7) "Rehabilitation" includes renewal, restoration, extension, enlargement, and improvement.
  - (8) "Stage construction" means the construction of a project in phases, with each phase resulting in one or more buildings or structures that individually or together are capable of use, regardless of whether later phases of the project are authorized.
  - (9) "Using agency" means:
    - (A) an instrumentality of the state that occupies and uses a state-owned or state-leased building; or
    - (B) the commission, with respect to a state-owned building maintained by the commission. (V.A.C.S. Art. 601b, Sec. 5.12 (part).)
- Sec. 2166.002. APPLICABILITY OF CHAPTER. This chapter applies only to a building construction project of the state. (V.A.C.S. Art. 601b, Sec. 5.13(a) (part).)

Sec. 2166.003. **EXCEPTIONS.** (a) Unless otherwise provided, this chapter does not apply to:

- (1) a project constructed by and for the Texas Department of Transportation;
- (2) a project constructed by and for a state institution of higher education;
- (3) a pen, shed, or ancillary building constructed by and for the Department of Agriculture for the processing of livestock before export;
- (4) a project constructed by the Parks and Wildlife Department;
- (5) a repair or rehabilitation project, except a major renovation, of buildings and grounds on the commission inventory;
- (6) a repair and rehabilitation project of another using agency, if all labor for the project is provided by the regular maintenance force of the using agency under specific legislative authorization and the project does not require the advance preparation of working plans or drawings; or
- (7) a repair and rehabilitation project involving the use of contract labor, if the project has been excluded from this chapter by commission rule and does not require the advance preparation of working plans or drawings.

(b) Only Sections 2166.104, 2166.151, 2166.152, 2166.153, 2166.154, 2166.155, 2166.251, 2166.252, and Subchapter H apply to a construction project undertaken by or for the institutional division of the Texas Department of Criminal Justice. (V.A.C.S. Art. 601b, Secs. 5.13(a) (part), (c), (d).)

Sec. 2166.004. **ADDITIONAL EXCEPTIONS.** In addition to the exceptions provided by Section 2166.003, this chapter does not apply to:

- (1) a project constructed by or under the supervision of a public authority created by the laws of this state; or
- (2) a state-aided local government project. (V.A.C.S. Art. 601b, Sec. 5.14.)

Sec. 2166.005. **COMMISSION PARTICIPATION IN OTHER BUILDING PROJECTS.** (a) Section 2166.003 does not prohibit the commission from undertaking on a cost recovery basis a project generally excluded from the application of this chapter by that section.

(b) A service provided under this section is not subject to the requirements of Chapter 771. The commission shall establish a system of charges and billings for services provided to ensure recovery of the cost of providing the services and shall submit a purchase voucher or a journal voucher after the close of each month to an agency for which services were performed. (V.A.C.S. Art. 601b, Sec. 5.13(b) (part).)

Sec. 2166.006. **LEGAL REPRESENTATION OF COMMISSION.** (a) The attorney general shall represent the commission in legal matters.

(b) The attorney general may employ special assistants to assist in the performance of duties arising under this chapter. (V.A.C.S. Art. 601b, Sec. 5.15(e).)

Sec. 2166.007. **VENUE.** A suit for breach of a contract under this chapter shall be brought in Travis County. (V.A.C.S. Art. 601b, Sec. 5.15(f).)

[Sections 2166.008 to 2166.050 reserved for expansion]

## SUBCHAPTER B. GENERAL POWERS AND DUTIES OF COMMISSION

Sec. 2166.051. **ADMINISTERING AGENCY.** The commission shall administer this chapter. (V.A.C.S. Art. 601b, Sec. 5.15(a) (part).)

Sec. 2166.052. **ACQUISITION AND DISPOSITION OF PROPERTY.** (a) The commission, as provided by law and by legislative appropriation, may:

- (1) acquire necessary real and personal property and modernize, remodel, build, or equip buildings for state purposes; and
- (2) contract as necessary to accomplish these purposes.

(b) The commission may not sell or otherwise dispose of real property of the state except by specific authority granted by the legislature. (V.A.C.S. Art. 601b, Sec. 5.01(a).)

**Sec. 2166.053. CONTRACT AUTHORITY.** To the extent permitted by appropriations, the commission may take action and contract to obtain sites that it considers necessary for the orderly future development of the state building program. (V.A.C.S. Art. 601b, Sec. 5.02(a).)

**Sec. 2166.054. TITLE TO AND CONTROL OF BUILDINGS; INITIAL OCCUPANTS.** (a) The commission shall obtain title for the state and retain control of:

- (1) real property acquired for a building site; and
- (2) any building located on the site.

(b) The commission or the legislature shall determine the initial state agency occupants of a building.

(c) This section applies only to a state building that has been or may be constructed in the municipality of Austin by the commission. (V.A.C.S. Art. 601b, Sec. 5.04.)

**Sec. 2166.055. EMINENT DOMAIN.** The commission may exercise the power of eminent domain under the general laws to obtain a building site. (V.A.C.S. Art. 601b, Sec. 5.03.)

**Sec. 2166.056. GRANT OF EASEMENT OR RIGHT-OF-WAY.** (a) The commission may grant a permanent or temporary easement or right-of-way over and on the land of a state agency on a project administered by the commission if it is necessary to ensure the efficient and expeditious construction, improvement, renovation, use, or operation of a building or facility of the project.

(b) The commission shall submit an easement or right-of-way that may extend beyond the period of construction to the asset management division of the General Land Office for written comment not later than the 30th day before the date it is granted by the commission.

(c) The commission shall consider comments submitted by the asset management division of the General Land Office before granting an easement or right-of-way. (V.A.C.S. Art. 601b, Sec. 5.11.)

**Sec. 2166.057. COORDINATION OF MULTIAGENCY PROJECTS.** The commission is the coordinating authority for the construction of any multiagency state office building authorized by the legislature. (V.A.C.S. Art. 601b, Sec. 5.15(a) (part).)

**Sec. 2166.058. ASSISTANCE BY OTHER AGENCIES.** (a) The commission may call on a department of state government to assist it in executing this chapter.

(b) The commission may call on the Texas Department of Transportation to make appropriate tests and analyses of the natural materials at the site of a building proposed to be constructed under this chapter to ensure that the foundation of the building is adequate for the building's life. (V.A.C.S. Art. 601b, Secs. 5.02(b), 5.05.)

**Sec. 2166.059. ASSIGNMENT OF COMMISSION EMPLOYEE TO OTHER AGENCY.** (a) The commission may assign a qualified professional employee to a using agency if, because of the volume of projects, the commission and using agency agree that full-time coordination between them is beneficial. The commission and using agency shall jointly determine the qualifications and duties of the assigned employee.

(b) The salary and related expenses of an assigned employee shall be charged against the projects of the using agency to which the employee is assigned.

(c) The commission shall terminate the assignment if the commission determines it is not required. (V.A.C.S. Art. 601b, Sec. 5.15(c).)

**Sec. 2166.060. SITE SELECTION AND CONSTRUCTION IN TEXAS MUNICIPALITIES.** (a) The commission may select and purchase a site in a municipality in this state to construct a state office building and adjoining parking spaces if the construction is considered necessary to house a state department or agency in the municipality.

(b) The commission may plan, construct, and initially equip a state office building and adjoining parking spaces on the site selected and purchased. (V.A.C.S. Art. 601b, Sec. 5.10(a).)

**Sec. 2166.061. GENERAL COMMISSION OVERSIGHT DURING CONSTRUCTION.** The commission is responsible for protecting the state's interests during the actual construction of a project subject to this chapter. (V.A.C.S. Art. 601b, Sec. 5.21 (part).)

Sec. 2166.062. RULEMAKING AUTHORITY. (a) The commission may adopt rules necessary to implement its powers and duties under this chapter.

(b) A rule adopted under this section is binding on a state agency on filing of the rule with the secretary of state.

(c) The commission shall prepare and publish a manual to assist using agencies in complying with this chapter and commission rules.

(d) Copies of the manual required by this section shall be:

(1) distributed to using agencies; and

(2) available to architects, engineers, contractors, and others who need and request copies. (V.A.C.S. Art. 601b, Sec. 5.15(d).)

Sec. 2166.063. FEDERAL REQUIREMENTS. (a) The commission may waive, suspend, or modify a provision of this chapter that conflicts with a federal statute or a rule, regulation, or administrative procedure of a federal agency if a waiver, suspension, or modification is essential to receive federal money for a project.

(b) If a project is wholly financed with federal money, a standard required by an enabling federal statute or required by a rule or regulation of the administering federal agency controls. (V.A.C.S. Art. 601b, Sec. 5.15(g).)

[Sections 2166.064 to 2166.100 reserved for expansion]

#### SUBCHAPTER C. STATEWIDE PLANNING AND REPORTING

Sec. 2166.101. COMPILATION OF CONSTRUCTION AND MAINTENANCE INFORMATION. (a) This section applies to a state-owned building, including a building otherwise exempt from this chapter under Section 2166.003.

(b) The commission shall biennially obtain the following information for each state-owned building from the using agency:

(1) the year of completion;

(2) the general construction type;

(3) the size;

(4) the use; and

(5) the general condition.

(c) The commission shall, for a building completed on or after September 1, 1979, obtain from a using agency information showing the total cost of the project and the cost of construction with other information necessary to meaningfully compare the cost of similar buildings.

(d) The commission shall summarize its findings on the status of state-owned buildings and current information on construction costs in a report it shall make available to the governor, the legislature, and the state's budget offices.

(e) State agencies, departments, and institutions shall cooperate with the commission in providing the information necessary for the report. (V.A.C.S. Art. 601b, Secs. 5.13(b) (part), 5.31.)

Sec. 2166.102. LONG-RANGE PLAN FOR STATE AGENCY SPACE NEEDS. (a) The commission shall prepare a long-range plan on the needs of state agencies in Travis County that obtain or occupy space under this subtitle.

(b) The commission shall maintain a six-year capital planning cycle and shall file a master facilities plan with the Governor's Office of Budget and Planning and the Legislative Budget Board before July 1 of each even-numbered year.

(c) The master facilities plan must contain:

(1) a projection of the amount of space needed by state agencies;

(2) an examination of the use, age, condition, and economic life of state-owned buildings on the commission's inventory;



(3) an analysis, in accordance with Subchapter D, of projects that have been requested by state agencies;

(4) an examination of the extent to which the state satisfies its need for space by leasing building space;

(5) an examination of state-paid operation and maintenance costs, including costs for telecommunications services, for existing buildings owned or leased by the state;

(6) a discussion of the economic and market conditions affecting the costs of the construction or lease of buildings;

(7) an analysis of whether the state will benefit more from satisfying its needs for space by:

(A) engaging in new projects;

(B) leasing built space; or

(C) satisfying its needs in another manner; and

(8) other information relevant to the long-range plan that is:

(A) considered appropriate by the commission; or

(B) requested in writing by the governor or the presiding officer of either house of the legislature.

(d) Each state agency housed wholly or partly in a facility on the commission's inventory or in a facility leased by the commission shall participate in the long-range planning process required by this section. (V.A.C.S. Art. 601b, Sec. 5.35.)

Sec. 2166.103. BIENNIAL REPORT ON SPACE NEEDS. (a) The commission shall continuously survey the state's office space needs to determine the space needed and the location of the need.

(b) Before each legislative session, the commission shall send to the governor, the lieutenant governor, the speaker of the house of representatives, and the Legislative Budget Board a report identifying counties in which more than 50,000 square feet of usable office space is needed and the commission's recommendations for meeting that need. The commission may recommend leasing or purchasing and renovating one or more existing buildings or constructing one or more buildings.

(c) The commission may collect appropriate information it considers necessary for preparing its recommendations and report. (V.A.C.S. Art. 601b, Sec. 5.34(a).)

Sec. 2166.104. BIENNIAL REPORT ON REQUESTED PROJECTS. (a) On or before a date specified by the state's budget agencies in each year immediately preceding a regular session of the legislature, the commission shall send to the budget agencies a report listing all projects requested under Subchapter D.

(b) The report must contain:

(1) a brief and specific justification prepared by the using agency for each project;

(2) a summary of the project analysis or, if the analysis was not made, a statement briefly describing the method used to estimate costs for the project;

(3) a project cost estimate developed in accordance with Subchapter D, detailed enough to allow the budget agencies, the governor, and the legislature the widest possible latitude in developing policy regarding each project request;

(4) an estimate, prepared by the commission with the cooperation of both the using agency and any private design professional retained, of the annual cost of maintaining the completed project, including the estimated cost of utility services; and

(5) an estimate, prepared by the using agency, of the annual cost of staffing and operating the completed project, excluding maintenance cost.

(c) If appropriate, the commission, with the using agency's approval, may indicate:

(1) the feasibility of stage construction of a requested project; and

(2) the degree to which money will be required in the next biennium if the project is undertaken in stages.

(d) If a using agency requests three or more projects, it shall designate its priority rating for each project. The budget agencies shall, with the commission's cooperation, develop detailed instructions to implement the priority system required by this subsection. The commission's report must show the designated priority of each project to which a priority rating has been assigned. (V.A.C.S. Art. 601b, Secs. 5.16(e), (f).)

[Sections 2166.105 to 2166.150 reserved for expansion]

#### SUBCHAPTER D. INDIVIDUAL PROJECT ANALYSIS

Sec. 2166.151. USING AGENCY'S GENERAL PROJECT DESCRIPTION; INITIATION OF PROJECT ANALYSIS PROCESS. (a) A using agency requesting a project shall prepare and send to the commission a general description of the project.

(b) The commission shall study a project description sent to it and shall initiate the preparation of a project analysis for:

- (1) a new construction project; and
- (2) any other project for which, in the commission's opinion, the cost of preparing a project analysis is justified. (V.A.C.S. Art. 601b, Sec. 5.16(a).)

Sec. 2166.152. PREPARATION OF PROJECT ANALYSIS. (a) The commission may retain a private design professional or use its own staff to prepare a project analysis.

(b) A private design professional retained to prepare a project analysis shall be selected as provided by Subchapter E.

(c) In preparing a project analysis, the commission and any private design professional it retains shall cooperate and work closely with the using agency so that the project analysis fully reflects the using agency's needs.

(d) A contract to prepare a project analysis must specify that the analysis becomes the commission's property. (V.A.C.S. Art. 601b, Secs. 5.16(b), (c) (part).)

Sec. 2166.153. CONTENTS OF PROJECT ANALYSIS. (a) A project analysis consists of:

- (1) a complete description of the project and a justification of the project prepared by the using agency;
- (2) a detailed estimate of the amount of space needed to meet the needs of the using agency and to allow for realistic growth;
- (3) a description of the proposed project prepared by a design professional that:
  - (A) includes schematic plans and outline specifications describing the type of construction and probable materials to be used; and
  - (B) is sufficient to establish the general scope and quality of construction;
- (4) an estimate of the probable cost of construction;
- (5) a description of the proposed site of the project and an estimate of the cost of site preparation;
- (6) an overall estimate of the cost of the project;
- (7) information prepared under Section 2166.451 about historic structures considered as alternatives to new construction;
- (8) an evaluation of energy alternatives as required by Section 2166.401; and
- (9) other information required by the commission.

(b) A project analysis may include two or more alternative proposals for meeting the using agency's space needs by:

- (1) new construction;
- (2) the acquisition and rehabilitation of an existing or historic structure; or
- (3) a combination of new and existing structures.

(c) If any part of a project involves the construction or rehabilitation of a building that is to be used primarily as a parking garage or for office space for state government, the project analysis also must include:

(1) a description of the amount and location of space in the building that can be made available for lease to private tenants under Subchapter E, Chapter 2165; or

(2) a statement of the reason that lease of space in the building to private tenants is not feasible.

(d) All estimates involved in the preparation of a project analysis shall be carefully and fully documented and incorporated into the project analysis. (V.A.C.S. Art. 601b, Sec. 5.16(c) (part).)

Sec. 2166.154. **USE OF PROJECT ANALYSIS OR COST ESTIMATE IN APPROPRIATIONS PROCESS.** The using agency shall use the cost of the project as determined by the project analysis or the cost estimate developed under Section 2166.155 as the basis of a request to the state's budget offices. (V.A.C.S. Art. 601b, Secs. 5.16(c) (part), (d) (part).)

Sec. 2166.155. **ESTIMATE OF PROJECT COSTS IN LIEU OF PROJECT ANALYSIS.** (a) If the commission determines that the cost of a project analysis is not justified or required, the commission shall, in cooperation with the using agency, develop a realistic estimate of the project's cost.

(b) If necessary, the commission shall arrange for an on-site inspection and analysis of the proposed project by a commission staff member.

(c) The commission shall inform a using agency of a cost estimate developed under this section. (V.A.C.S. Art. 601b, Sec. 5.16(d) (part).)

Sec. 2166.156. **PREPARATION OF PRELIMINARY AND WORKING PLANS AND SPECIFICATIONS.** (a) The preliminary plans and outline specifications and the working plans and specifications for a project shall be prepared by:

(1) a private design professional selected and retained by the commission in accordance with Subchapter E; or

(2) unless the commission is required to retain a design professional under Subsection (b), the commission's professional staff.

(b) The commission shall retain a private design professional for:

(1) a new construction project estimated to cost more than \$100,000; or

(2) a new construction project for which the using agency requests a private design professional.

(c) The commission shall ensure that plans and specifications:

(1) are clear and complete;

(2) permit execution of the project with appropriate economy and efficiency; and

(3) conform with the requirements described by the previously prepared project analysis.

(d) The commission must approve plans and specifications before the using agency may accept or use them. (V.A.C.S. Art. 601b, Sec. 5.20(a).)

Sec. 2166.157. **ACCOUNTING FOR PROJECT ANALYSIS EXPENSES.** When the legislature approves a project and appropriates money for its construction, the engineering, architectural, and other planning expenses necessary to make a project analysis are the first charge against the project for which the analysis was made. (V.A.C.S. Art. 601b, Sec. 5.24 (part).)

[Sections 2166.158 to 2166.200 reserved for expansion]

#### SUBCHAPTER E. PRIVATE DESIGN PROFESSIONALS

Sec. 2166.201. **COMMISSION FILES ON PRIVATE DESIGN PROFESSIONALS.** (a) The commission shall maintain a file of all prospective private design professionals who express an interest in building construction projects of the state.

(b) The commission shall include in the file information that the commission considers essential and advisable, with brochures and exhibits submitted by each private design professional.

(c) A prospective private design professional may submit additional brochures, exhibits, and information that the design professional considers necessary to keep the files current and that are in accordance with the design professional's ethical practice.

(d) A using agency may inspect the files. (V.A.C.S. Art. 601b, Sec. 5.22(a).)

Sec. 2166.202. **SELECTION OF PRIVATE DESIGN PROFESSIONAL; RULES.** (a) The commission is responsible for selecting any private design professional retained for a project subject to this chapter.

(b) The commission, in consultation with the Texas Board of Architectural Examiners and the State Board of Registration for Professional Engineers, shall adopt by rule criteria to evaluate the competence and qualifications of a prospective private design professional.

(c) The commission shall select a private design professional in accordance with a rule adopted under this section and the ethical standards of the professional societies of architects and engineers. (V.A.C.S. Art. 601b, Secs. 5.22(b) (part), (c) (part).)

Sec. 2166.203. **INTERVIEW NOTIFICATION TO PRIVATE DESIGN PROFESSIONAL.** (a) The commission shall notify a private design professional selected for an interview of the person's selection not later than the 30th day before the date of the interview to allow preparation for the interview.

(b) Subsection (a) does not apply in an emergency situation that:

- (1) presents an imminent peril to the public health, safety, or welfare;
- (2) presents an imminent peril to property;
- (3) requires expeditious action to prevent a hazard to life, health, safety, welfare, or property; or
- (4) requires expeditious action to avoid undue additional cost to the state. (V.A.C.S. Art. 601b, Secs. 5.22(b) (part), (d).)

Sec. 2166.204. **USING AGENCY RECOMMENDATIONS.** The commission shall request that the using agency make recommendations regarding private project designers. The commission shall consider the recommendations in selecting a private design professional to be retained for a particular project. (V.A.C.S. Art. 601b, Sec. 5.22(c) (part).)

Sec. 2166.205. **COMPENSATION OF PRIVATE DESIGN PROFESSIONAL.** (a) A private design professional retained under this chapter shall be compensated under this section.

(b) The commission shall establish compensation for a new project or rehabilitation project by studying compensation paid in this state by private clients for projects of comparable size and complexity. Compensation may not exceed the minimum recommended for similar projects by the:

- (1) Texas Society of Architects, if the private design professional is an architect; or
- (2) Texas Society of Professional Engineers, if the private design professional is an engineer.

(c) Compensation established by the commission covers all professional services rendered by a private design professional, including professional inspection as defined by Section 2166.351. If the commission requires detailed inspection as defined by Section 2166.351, the commission shall increase compensation by an amount equal to the actual cost of providing the detailed inspection.

(d) Compensation for preparation of a project analysis under Subchapter D may not exceed one percent of the estimated cost of construction. If the project is approved by the legislature in substantially the form originally requested and the same private design professional is retained for the later phases of design, compensation paid for preparing the project analysis under this subsection shall be deducted from compensation paid under Subsections (b) and (c). (V.A.C.S. Art. 601b, Sec. 5.23 (part).)

Sec. 2166.206. **INFORMATION FURNISHED BY STATE.** The state shall furnish to a private design professional retained under this chapter:

- (1) detailed information on space requirements and relationships and the justification for, use of, and general requirements for the project; and

(2) a complete site survey and soil analysis. (V.A.C.S. Art. 601b, Sec. 5.23 (part).)

[Sections 2166.207 to 2166.250 reserved for expansion]

SUBCHAPTER F. PROJECT AUTHORIZATION;  
BIDDING AND CONTRACT PROCEDURES

Sec. 2166.251. LEGISLATIVE AUTHORIZATIONS AND APPROPRIATIONS. (a) Only the legislature may authorize a project.

(b) A legislative appropriation for a project is directly to a using agency unless the project is to be constructed by the commission, in which event the appropriation is to the commission.

(c) An appropriation for the construction of a project expresses the legislative intent that the project be completed within the limits of the appropriation.

(d) If the legislative authorization provides for stage construction of a project, the commission shall proceed with the project through the specifically authorized stage. (V.A.C.S. Art. 601b, Secs. 5.17(a), (b) (part), (c).)

Sec. 2166.252. MODIFYING PROJECT TO CONFORM TO APPROPRIATIONS. (a) If money appropriated for a project is less than the amount originally requested or is less than the amount required for the project as originally submitted to the state budget agencies, the commission and the using agency shall confer on how to bring the project cost within the amount appropriated. The commission and the using agency shall make every effort to comply with legislative intent to modify the project as originally submitted.

(b) The commission shall notify the using agency that it considers the project canceled if it is impossible to modify the project to bring the cost within the amount appropriated.

(c) If authorized by an act appropriating money for a project, a using agency may appeal the decision of the commission to cancel a project to the governor by submitting a request that:

(1) the project be undertaken as stage construction; or

(2) the money available for the project be supplemented by the transfer of money appropriated to the same using agency for other projects of equal or lower priority or from the unused contingency reserves of any project of the same using agency.

(d) The governor shall, after obtaining the advice of the Legislative Budget Board, rule on a request submitted under Subsection (c). If the ruling favors the using agency, the commission shall proceed with the project. (V.A.C.S. Art. 601b, Sec. 5.17(b) (part).)

Sec. 2166.253. BIDDING PROCEDURES. (a) After final approval of a project's working plans and specifications and their acceptance by a using agency, the commission shall advertise in two or more newspapers of general circulation for bids or proposals for the construction of and related work on the project.

(b) The commission shall allow bidders not less than 30 days after the date the commission issues the bid documents to respond to an invitation to bid. The commission may shorten the time for response to prevent undue additional costs to a state agency or, for emergency projects, to prevent or remove a hazard to life or property. (V.A.C.S. Art. 601b, Sec. 5.20(c) (part).)

Sec. 2166.254. REVIEW OF CERTAIN BIDS BY HISTORICAL COMMISSION. (a) Before a contract is awarded for the major repair or renovation of a state structure designated by the Texas Historical Commission as a Recorded Texas Historic Landmark, the commission shall forward to the Texas Historical Commission a copy of bids received and an evaluation of the bidders' qualifications.

(b) The Texas Historical Commission shall review the bids and qualifications and recommend to the commission the bidder to which the award should be made.

(c) The commission may award the contract to a bidder other than the lowest bidder based on the Texas Historical Commission's recommendation. (V.A.C.S. Art. 601b, Sec. 5.20(d).)

Sec. 2166.255. **AWARD OF CONTRACT.** (a) A contract shall be awarded to the qualified bidder making the lowest and best bid in accordance with the law on awarding a state contract.

(b) The commission may reject all bids.

(c) A contract may not be awarded for an amount greater than the amount that the comptroller certifies to be available for the project. (V.A.C.S. Art. 601b, Sec. 5.20(c) (part).)

Sec. 2166.256. **ACQUISITION OF ITEMS NOT FURNISHED UNDER CONSTRUCTION CONTRACT.** Equipment or furnishings not constructed or installed under a construction contract shall be acquired through regular state purchasing methods. (V.A.C.S. Art. 601b, Sec. 5.20(g).)

Sec. 2166.257. **CONTRACT PAYMENT ADMINISTRATION.** (a) On receipt of notice and itemized statements from the commission, the comptroller shall:

(1) account for prior expenditures on behalf of a project as expenditures from the project's appropriation, based on the amount of those expenditures certified by the commission; and

(2) reserve from a project's appropriation an amount estimated by the commission to be sufficient to cover contingencies over the amounts obligated by contract or otherwise for:

(A) planning, engineering, and architectural work;

(B) site acquisition and development; and

(C) construction, equipment, and furnishings contracts.

(b) The money reserved under Subsection (a)(2) may be used only if:

(1) the design professional or contractor recommends and justifies the proposed contingency expenditures by submitting a change order request;

(2) the proposed change order request is approved by the design professional;

(3) the proposed change order request is approved by the using agency and the agency makes a formal request for the allocation of money from the contingency reserve; and

(4) the director of facilities construction and space management appointed under Section 2152.104 investigates the nature of the change order and concurs in the necessity of the proposed expenditure or refuses to concur not later than the 15th day after the date of receiving the request.

(c) If the director of facilities construction and space management refuses to concur in a proposed contingency expenditure, the using agency may appeal to the commission. The commission's findings are final. The commission shall adopt rules on the procedures for an appeal under this subsection.

(d) If an approved change order results in a reduction of construction cost, the amount of the contingency reserve shall be increased by the amount of the reduction.

(e) The comptroller shall issue warrants to pay progress payments and final payments on construction under this chapter on the commission's written approval. (V.A.C.S. Art. 601b, Secs. 5.20(e), (f).)

Sec. 2166.258. **COMMON SURETY OR INSURER.** (a) The commission or an agency whose project is exempted from all or part of this chapter under Section 2166.003 may negotiate an arrangement advantageous to the state with a surety or an insurer, as appropriate, authorized to do business in this state to furnish bonds, insurance, or both that a contractor or subcontractor is required to execute or carry to receive a contract or subcontract on a project administered by the commission or other agency.

(b) Notwithstanding Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code), the commission or other agency may require a contractor or subcontractor to meet part or all of the bonding or insurance requirements for the project under the arrangement negotiated by the commission or other agency. (V.A.C.S. Art. 601b, Sec. 5.265.)

Sec. 2166.259. **SMALL CONTRACTOR PARTICIPATION ASSISTANCE PROGRAM.** (a) This section applies only to a contract for a public works project that has an estimated cost of more than \$20 million.

(b) The commission shall maintain a small contractor participation assistance program to ensure full opportunity for participation in public works projects by small contractors. The program must include a:

(1) system for the centralized purchase of necessary insurance coverage for the public works project that is required under Subsection (c);

(2) public outreach plan to:

(A) provide public information about the program; and

(B) encourage small contractors to participate in the program;

(3) technical assistance plan to aid small contractors in developing the skills necessary to participate in the program in accordance with Subsection (d); and

(4) financing assistance plan to provide administrative and other assistance to small contractors in obtaining necessary financing arrangements to make the participation of those contractors possible.

(c) The commission shall provide for the centralized purchasing of:

(1) workers' compensation insurance coverage;

(2) employer's liability insurance coverage;

(3) commercial general and excess liability coverage;

(4) payment and performance bonds; and

(5) other similar coverage the commission considers necessary and reasonable for the public works project.

(d) A technical assistance plan adopted by the commission must include information on and assistance in:

(1) bid estimation, the bidding process, scheduling, and the understanding of bid documents;

(2) the reading of construction drawings and other analogous documents;

(3) business accounting, bonds, and bond requirements;

(4) negotiation with general contractors; and

(5) other technical and administrative matters considered appropriate and necessary given the complexity and scope of the public works project.

(e) The commission may negotiate contracts with persons or firms having expertise in the areas that must be included in the commission's technical assistance plan to provide the information and assistance.

(f) In this section:

(1) "Public works project" means a construction project designed to serve the public necessity, use, or convenience that is undertaken and executed by the commission, including a project for the construction, alteration, or repair of a public building.

(2) "Small contractor" means a contractor that operates as a small-business concern as defined by the Small Business Act (15 U.S.C. Chapter 14A). (V.A.C.S. Art. 601b, Sec. 5.37.)

[Sections 2166.260 to 2166.300 reserved for expansion]

#### SUBCHAPTER G. UNIFORM GENERAL CONDITIONS IN STATE CONSTRUCTION CONTRACTS

Sec. 2166.301. EXCEPTIONS. Sections 2166.303 and 2166.304 do not apply to a contract made with a person subject to:

(1) the safety standards of Article 6053-1, Revised Statutes; and

(2) the administrative penalty provisions of Article 6053-2, Revised Statutes. (V.A.C.S. Art. 601b, Sec. 5.26(a-5).)

Sec. 2166.302. ADOPTION OF CONDITIONS. The commission shall adopt uniform general conditions to be incorporated into all building construction contracts made by the

state, including a contract for a project excluded from this chapter by Section 2166.003, but not including a contract for a project excluded from this chapter by Section 2166.004. (V.A.C.S. Art. 601b, Sec. 5.26(a).)

Sec. 2166.303. **UNIFORM TRENCH SAFETY CONDITIONS.** (a) The uniform general conditions for a construction project in which trench excavation will exceed a depth of five feet must require that the bid documents provided to all bidders and the contract include:

- (1) a reference to the federal Occupational Safety and Health Administration's standards for trench safety that will be in effect during the construction of the project;
- (2) a copy of the state's special shoring requirements, if any, with a separate pay item for the special shoring requirements;
- (3) a copy of geotechnical information obtained by the owner for use by the contractor in the design of the trench safety system; and
- (4) a separate pay item for trench excavation safety protection.

(b) The separate pay item for trench safety is determined by the linear feet of trench excavated. The separate pay item for the state's special shoring requirements, if any, is determined by the square feet of shoring used.

(c) In this section, "trench" has the meaning assigned by the standards adopted by the federal Occupational Safety and Health Administration. (V.A.C.S. Art. 601b, Secs. 5.26(a-1), (a-2), (a-4).)

Sec. 2166.304. **PRE-BID CONFERENCE.** (a) A state agency may require bidders to attend a pre-bid conference to coordinate a geotechnical investigation of the project site by the bidders.

(b) In awarding a contract, an agency may not consider a bid from a bidder who failed to attend a pre-bid conference required under this section. (V.A.C.S. Art. 601b, Sec. 5.26(a-3).)

Sec. 2166.305. **REVIEW OF UNIFORM GENERAL CONDITIONS.** (a) The commission shall require a review of the uniform general conditions of state building construction contracts whenever the commission considers review worthwhile, but not less frequently than once every five years.

(b) A committee appointed by the commission shall perform the review. The committee consists of:

(1) the director of facilities construction and space management appointed under Section 2152.104, who serves ex officio as the presiding officer of the committee and who votes only in case of a tie;

(2) seven individuals appointed by the commission, one each from the lists of nominees submitted respectively by the:

- (A) president of the Texas Society of Architects;
- (B) president of the Texas Society of Professional Engineers;
- (C) presiding officer of the Executive Council of the Texas Associated General Contractors Chapters;
- (D) executive secretary of the Mechanical Contractors Associations of Texas, Incorporated;
- (E) executive secretary of the Texas Building and Construction Trades Council;
- (F) president of the Associated Builders and Contractors of Texas; and
- (G) executive director of the National Association of Minority Contractors, with the list composed of persons who reside in this state;

(3) one individual appointed by the commission representing an institution of higher education, as defined by Section 61.003, Education Code;

(4) one individual appointed by the commission representing a state agency that has a substantial ongoing construction program; and

(5) one individual appointed by the commission representing the attorney general's office.



(c) Members of the committee serve without compensation but may be reimbursed for actual and necessary expenses. (V.A.C.S. Art. 601b, Sec. 5.26(b).)

[Sections 2166.306 to 2166.350 reserved for expansion]

#### SUBCHAPTER H. PROJECT INSPECTION

Sec. 2166.351. DEFINITIONS. In this subchapter:

(1) "Detailed inspection" means close, technical, on-site examination of materials, structure, and equipment and surveillance of the quality and methods of work, performed by one or more full-time personnel at the project site, to reasonably ensure that the project is accomplished in compliance with information in the contract documents and with good construction practices.

(2) "General inspection" means the examination and inspection of the project at periodic intervals by commission employees.

(3) "Professional inspection" means the periodic examination of all elements of the project to reasonably ensure that they meet the performance and design features and the technical and functional requirements of the contract documents. (V.A.C.S. Art. 601b, Secs. 5.21(1) (part), (2) (part), (3) (part).)

Sec. 2166.352. CATEGORIES OF INSPECTION. The three categories of inspection during construction are:

(1) detailed inspection;

(2) general inspection; and

(3) professional inspection. (V.A.C.S. Art. 601b, Sec. 5.21 (part).)

Sec. 2166.353. DETAILED INSPECTION. (a) The decision to require a detailed inspection is in the commission's sole discretion. The commission shall base its decision on the project's size and complexity.

(b) The full cost of detailed inspection is a charge against the project.

(c) A project construction inspector appointed by the design professional with the commission's approval shall perform detailed inspection.

(d) The project construction inspector shall:

(1) become thoroughly conversant with the drawings, specifications, details, and general conditions for executing the work;

(2) keep records of the work as required by the design professional and the commission;

(3) make reports to the design professional with copies to the commission and the using agency as required by the design professional and the commission;

(4) maintain at the construction site copies of the records and reports required under Subdivisions (2) and (3) with the plans, specifications, shop drawings, change orders, and correspondence dealing with the project;

(5) endeavor to ensure that the contractor is fulfilling the requirements of the contract documents;

(6) endeavor to ensure that all authorized changes are properly incorporated in the work and that a change is not made unless properly authorized;

(7) notify the design professional if conditions encountered at the project vary from the contract documents and comply with the design professional's directives in endeavoring to correct those conditions;

(8) review shop drawings in relation to their adaptability to job conditions and advise the design professional in that regard;

(9) endeavor to ensure that materials and equipment furnished comply with the specifications;

(10) ensure that records are kept on construction plans of the principal elements of mechanical and electrical systems;

(11) ensure that accurate records are kept of all underground utility installations at the project site, including existing installations uncovered in the process of construction, so that the information may be recorded on site plans or drawings that may be established and maintained by the commission or the using agency;

(12) keep a daily written log of all significant happenings on the job, including the number of workers working each day and the weather conditions during the day;

(13) observe and give prompt written notice to the construction contractor's representative and the design professional of noncompliance with contract documents on the part of the contractor's representative and notify the design professional and the commission of a failure to take corrective measures promptly;

(14) initiate, attend, and participate in progress meetings and inspections with the contractor;

(15) review every contractor's invoice against the value of partially or fully completed work and the materials stored at the project site before the invoice is forwarded to the design professional and promptly notify the design professional of a discrepancy between the review of the work and the invoice; and

(16) be responsible to the design professional for the proper administration of the duties listed in this section and comply with other instructions and assignments of the design professional.

(e) If the commission requires detailed inspection of a project's construction, the design professional shall select, subject to the commission's approval, the project construction inspector and is responsible for the proper administration of the duties listed in Subsection (d). The design professional shall pay the salary of the project construction inspector and shall be reimbursed for the salary costs and the overhead expenses directly applicable to the salary. (V.A.C.S. Art. 601b, Secs. 5.21(1) (part), (4).)

Sec. 2166.354. GENERAL INSPECTION. (a) On a project for which a project construction inspector is employed by a design professional, the general inspector shall work with and through the project construction inspector and the design professional. On all other projects, the general inspector shall work with and through the design professional and shall exercise the detailed inspection functions the commission requires.

(b) The cost of general inspection is a charge against the project. (V.A.C.S. Art. 601b, Sec. 5.21(2) (part).)

Sec. 2166.355. PROFESSIONAL INSPECTION; RELATED SERVICES. (a) The design professional or the design professional's authorized representative shall perform professional inspection.

(b) The design professional or the design professional's authorized representative shall:

(1) assist the commission in obtaining proposals from contractors and in awarding and preparing construction contracts;

(2) be responsible for interpretation of the contract documents and changes made to the contract documents;

(3) provide an interpretation of plans and specifications as required during construction;

(4) check and approve samples, schedules, shop drawings, and other submissions only for conformance with the design concept of the project and for compliance with the information in the contract documents;

(5) approve or disapprove all change order requests and, subject to Section 2166.257, prepare all change orders;

(6) assemble all written guarantees required of the contractors;

(7) make periodic visits to the project site to become generally familiar with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the contract documents;

(8) make a written inspection report after each visit to the project site and send a copy of the report to the contractor and the commission;

(9) keep the commission informed of the progress of the work and endeavor to guard against defects and deficiencies in contractors' work;

(10) determine periodically the amount owing to the contractors and recommend to the commission payment of that amount; and

(11) conduct inspections to determine the dates of substantial and final completion and notify the commission and the using agency of the determination.

(c) The amount of time that on-site inspections under Subsection (b)(7) take is computed by dividing the total compensation for professional services, excluding payments for detailed inspection, by 100, with the result expressed as the number of hours to be devoted to on-site inspections, project conferences with the contractor and others, and travel to and from those inspections and conferences.

(d) A recommendation under Subsection (b)(10) constitutes a representation to the commission that:

(1) based on observations and other pertinent information, the work has progressed to the point indicated; and

(2) to the best of the design professional's knowledge, information, and belief, the quality of the work is in accordance with the plans, specifications, and contract documents.

(e) This section does not:

(1) require the design professional to assume responsibility for or guarantee the complete adherence of the contractor to the plans and specifications and contract documents; or

(2) make the design professional liable for defects in construction.

(f) If a private design professional is retained, the fee paid that design professional is considered to cover professional inspection but not the additional cost of detailed inspection beyond the administrative duties specifically encompassed by Section 2166.353(e). If the commission's staff serves as design professional, the commission is responsible for professional supervision and the cost of supervision is a charge against the project. (V.A.C.S. Art. 601b, Secs. 5.21(3) (part), (5), (6).)

Sec. 2166.356. FINAL INSPECTION; FINAL PAYMENT; INSPECTION DURING GUARANTEE PERIOD. (a) The commission is responsible for directing final payment for work done on each project. If on final inspection of a project it determines that the plans, specifications, contract, or change orders for the project have not been fully complied with, the commission shall, until compliance has occurred or adjustments satisfactory to the commission have been made, refuse to direct final payment.

(b) Final inspection consists of an on-site inspection by the design professional, a commission representative, a using agency representative, and at least one representative of each contractor.

(c) The commission shall schedule the final inspection not later than the 10th day after the date the design professional notifies the commission that the contract has been performed according to the plans and specifications.

(d) On completion of the project, the commission shall release the project to the using agency.

(e) The commission is responsible for inspecting the project before the expiration of the guarantee period to observe defects that may appear not later than the first anniversary of the date the contract is completed. The commission shall give prompt written notice to the contractor of defects that are due to faulty materials or work. This subsection does not require the contractor to assume responsibility for or guarantee defects other than those due to faulty materials or work or failure on the contractor's part to adhere to the contract documents. (V.A.C.S. Art. 601b, Sec. 5.25.)

[Sections 2166.357 to 2166.400 reserved for expansion]

## SUBCHAPTER I. CONSERVATION OF ENERGY AND WATER

Sec. 2166.401. **EVALUATION OF ENERGY ALTERNATIVES.** (a) For each project for which a project analysis is prepared under Subchapter D and for which the construction, alteration, or repair involves installing or replacing all or part of an energy system, energy source, or energy-consuming equipment, the commission or the private design professional retained by the commission shall prepare a written evaluation of energy alternatives for the project.

(b) The evaluation must include information about the economic and environmental impact of various energy alternatives, including an evaluation of economic and environmental costs both initially and over the life of the system, source, or equipment.

(c) The evaluation must identify the best energy alternative for the project considering both economic and environmental costs and benefits. (V.A.C.S. Art. 601b, Sec. 5.161.)

Sec. 2166.402. **ENERGY CONSERVATION STANDARDS FOR ENTITIES OTHERWISE EXCLUDED FROM CHAPTER.** (a) The governing body of a state agency, commission, or institution that is exempt from this chapter under Section 2166.003 shall adopt and publish energy conservation design standards as provided by Section 447.004 for a new building under the entity's authority. The standards must be:

(1) consistent with those adopted by the commission for other state buildings; and

(2) prepared in cooperation and consultation with the energy management center of the governor's office.

(b) The energy management center of the governor's office shall assist a governing body of a state agency, commission, or institution subject to Subsection (a) in preparing energy conservation standards by providing technical assistance and advice. (V.A.C.S. Art. 601b, Sec. 5.28.)

Sec. 2166.403. **ALTERNATIVE ENERGY.** (a) This section applies to the construction of a new state building, including a building construction project otherwise exempt from this chapter under Section 2166.003.

(b) During the planning phase of the proposed construction, the commission, or the governing body of the appropriate agency or institution that is undertaking a project otherwise exempt from this chapter under Section 2166.003, shall verify in an open meeting the economic feasibility of incorporating into the building's design and proposed energy system alternative energy devices for space heating and cooling, water heating, electrical loads, and interior lighting. The commission or governing body shall determine economic feasibility for each function by comparing the estimated cost of providing energy for the function using conventional design practices and energy systems with the estimated cost of providing energy for the function using alternative energy devices during the economic life of the building.

(c) If the use of alternative energy devices for a particular function is determined to be economically feasible under Subsection (b), the commission or governing body shall include the use of alternative energy devices for that function in the construction plans.

(d) In this section:

(1) "Alternative energy" means a renewable energy resource. The term includes solar energy, biomass energy, and wind energy.

(2) "Alternative energy collector" means an assembly, structure, or design, including passive elements, used to absorb, concentrate, convert, reflect, or otherwise capture or redirect alternative energy for later use as thermal, mechanical, or electrical energy.

(3) "Alternative energy device" means an alternative energy collector or alternative energy storage mechanism that collects, stores, or distributes alternative energy.

(4) "Alternative energy storage mechanism" means equipment, components, or elements designed and used to store for later use alternative energy captured by an alternative energy collector in the form in which the energy will eventually be used or in an intermediate form. The term includes thermal, electrochemical, chemical, electrical, and mechanical storage mechanisms.

(5) "Biomass energy" means energy that is created in living plants through photosynthesis.

(6) "Solar energy" means energy from the sun that may be collected and converted into useful thermal, mechanical, or electrical energy. (V.A.C.S. Art. 601b, Sec. 5.32; New.)

Sec. 2166.404. XERISCAPE ON NEW CONSTRUCTION. (a) The commission, in consultation with the Texas Natural Resource Conservation Commission, the Texas Department of Transportation, and the Industry Advisory Committee, by rule shall adopt guidelines for the required use of xeriscape on state property associated with the construction of a new state building, structure, or facility that begins on or after January 1, 1994, including a project otherwise exempt from this chapter under Section 2166.003.

(b) The guidelines adopted under this section must:

(1) establish standards for landscape design, installation, and maintenance that result in water conservation, including the use of appropriate plants, soil analysis, compost, efficient irrigation systems, and other water-conserving practices;

(2) identify beneficial plant species;

(3) specify the maximum percentage of turf and the maximum percentage of impervious surface allowed in a xeriscaped area;

(4) establish standards for selection and installation of turf;

(5) establish standards for land clearing;

(6) require preservation of existing native vegetation identified as beneficial; and

(7) establish a monitoring program to ensure implementation of and compliance with this section.

(c) The Industry Advisory Committee is composed of nine members who are Texas residents appointed by the commission. Three members must be nursery-product growers, three members must be turf-growers, and three members must be landscape contractors. The commission shall make appointments from a list of recommendations submitted to the commission by the Texas Association of Nurserymen for the nursery-product-grower positions, the Texas Turf Association for the turf-grower positions, and the Texas Association of Landscape Contractors for the landscape-contractor positions. Appointments are for staggered three-year terms arranged so that one person from each group is appointed each year. The appointments to the committee must reflect this state's gender and ethnic diversity.

(d) In this section, "xeriscape" means a landscaping method that maximizes the conservation of water by using plants that are appropriate to the site and efficient water-use techniques. The term includes:

(1) planning and design;

(2) appropriate choice of plants;

(3) soil analysis;

(4) soil improvement using compost;

(5) efficient and appropriate irrigation;

(6) practical use of turf;

(7) appropriate use of mulches; and

(8) proper maintenance. (V.A.C.S. Art. 601b, Secs. 5.321(a), (b) (part), (c), (d), (e).)

Sec. 2166.405. XERISCAPE PHASE-IN. The commission shall develop a five-year program for phasing in the use of xeriscape on state property associated with a state-owned building, structure, or facility on which construction began before January 1, 1994. (V.A.C.S. Art. 601b, Sec. 5.321(b) (part).)

[Sections 2166.406 to 2166.450 reserved for expansion]

#### SUBCHAPTER J. ACQUISITION OF EXISTING BUILDINGS

Sec. 2166.451. ACQUISITION OF HISTORIC STRUCTURES. (a) In acquiring real property, each using agency shall first consider a building that is a historic structure under

Section 442.001 or a building that has been designated a landmark by the local governing authority if:

- (1) the building meets requirements and specifications; and
  - (2) the cost is not substantially higher than that of other available structures that meet requirements and specifications.
- (b) When considering the construction of a new state building, a using agency shall notify the Texas Historical Commission and request from it a list of historic structures in the proposed construction area that are suitable and available for state acquisition.
- (c) If the using agency decides to proceed with new construction, the agency shall forward to the commission for inclusion in the project analysis for the new construction:
- (1) the date it notified the Texas Historical Commission of the proposed construction;
  - (2) the date of the Texas Historical Commission's response;
  - (3) a copy of the list of historic structures furnished by the Texas Historical Commission; and
  - (4) a statement of the reasons for the rejection of each of the historic structures on the list.
- (d) If the using agency rejects acquisition of a historic structure because of the structure's cost, the agency shall forward to the commission for inclusion in the project analysis for the new construction a comparison of the cost of the new construction with the cost of the purchase and rehabilitation of the historic structure.
- (e) In determining the feasibility of acquiring a historic structure, the using agency shall evaluate the possibility of providing the space needed by the agency by combining new construction with acquisition of the historic structure.
- (f) On request of the using agency, the commission shall assist the agency in evaluating the feasibility of acquiring a historic structure and in preparing the information required by Subsections (c) and (d).
- (g) The commission shall comply with Subsections (a)–(e) for a:
- (1) project for which it is the using agency; or
  - (2) multiagency state office building for which it serves as the coordinating authority. (V.A.C.S. Art. 601b, Sec. 5.01A.)

Sec. 2166.452. ACQUISITION OF EXISTING BUILDING AS ALTERNATIVE TO NEW CONSTRUCTION. (a) If the legislature authorizes the issuance of bonds by the Texas Public Finance Authority to construct one or more buildings and improvements in a county, the commission may solicit and receive proposals, using the same procedures that apply to the purchase of other real property, for the purchase of one or more existing buildings with bond proceeds. If the commission's evaluation of the proposals demonstrates that purchase of one or more existing buildings is an appropriate and financially advantageous means of meeting all or part of the state's office space needs in that county, the commission shall certify that fact to the authority and request the authority to issue all or part of its bonds previously authorized by the legislature for that purpose.

(b) The commission shall determine financial advantage under Subsection (a) after comparing construction and purchase as fairly as possible. In making its determination, the commission shall impute value and consider factors as it considers appropriate, including consideration of the:

- (1) estimated cost of construction and of acquiring land for the construction;
- (2) anticipated purchase price of one or more existing buildings;
- (3) estimated cost of converting one or more existing buildings to state building specifications, including reconstruction costs only when reconstruction is necessary;
- (4) efficiency and suitability of an existing building's space as configured for state use;
- (5) estimated occupancy dates for proposed construction compared with estimated occupancy dates for an existing building;

(6) value of an existing building's location, parking, landscaping, and other enhancements;

(7) remaining useful life of mechanical components of an existing building; and

(8) estimated cost of maintenance and operations, including the cost of telecommunications services, for each option considered by the commission.

(c) On a determination under Subsection (a) that a purchase is more advantageous to the state, the commission may abandon construction plans. If additional costs, over available bond proceeds, must be incurred to accomplish the purchase and any necessary renovation of the purchased property, the commission may use available appropriated money and request additional bonds of the Texas Public Finance Authority in an amount of up to five percent of the acquisition cost for that purpose.

(d) A purchase under this section must be approved by the legislature if it is in session or by the Legislative Budget Board if the legislature is not in session.

(e) A person from whom real property or an existing building or other improvement is purchased under this section shall provide to the commission the name and the last known address of each person who:

(1) owns record legal title to the real property or building or other improvement; or

(2) owns a beneficial interest in the real property or building or other improvement through a trust, nominee, agent, or other legal entity. (V.A.C.S. Art. 601b, Secs. 5.34(b), (c), (d), (e).)

Sec. 2166.453. ACQUISITION OF EXISTING BUILDING AS ALTERNATIVE TO LEASING SPACE. (a) This section applies only to meeting office space needs of one or more state agencies in a county in which the state leases 50,000 square feet or more of usable office space.

(b) The commission may meet office space needs of one or more state agencies that are being met through leased space by purchasing one or more existing buildings under this section. The purchase of a building may include the purchase of the building's grounds and related improvements. The purchase of a building under this section must be:

(1) financed through bonds issued by the Texas Public Finance Authority; and

(2) approved by the legislature if it is in session or by the Legislative Budget Board if the legislature is not in session.

(c) The commission may purchase a building under this section only if the commission determines that the projected annual total space occupancy costs of the purchased space will not exceed, over the term of the bonded indebtedness, the projected annual total space occupancy costs of meeting the same space needs through leased space.

(d) If the commission makes the necessary determination under Subsection (c) and the purchase is approved under Subsection (b), the Texas Public Finance Authority shall issue and sell bonds to finance the purchase under the Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), and the commission may purchase the building under that Act and other applicable law.

(e) The limitation prescribed by Section 9, Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), relating to the location of a building for which bonds may be issued and sold does not apply to financing the purchase of a building under this section.

(f) A person from whom real property or an existing building or other improvement is purchased under this section shall provide to the commission the name and the last known address of each person who:

(1) owns record legal title to the real property or building or other improvement; or

(2) owns a beneficial interest in the real property or building or other improvement through a trust, nominee, agent, or other legal entity.

(g) If a state agency vacates leased space to move into space in a building purchased under this section or if the leased space itself is purchased under this section, the money specifically appropriated by the legislature or the money available to and budgeted by the agency for lease payments for the leased space for the remainder of the biennium may be used only for

rental or installment payments for the purchased space under Section 12(b), Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), and for the payment of operating expenses for the purchased space that are incurred by the commission. The comptroller may adopt rules for the administration of this subsection.

(h) In this section, "total space occupancy costs" include:

- (1) for leased space, the direct cost of the lease payments for the space;
- (2) for purchased space, the direct cost of rental or installment payments for the space under Section 12(b), Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes);
- (3) the cost of necessary renovations;
- (4) operating costs, including janitorial and utility costs; and
- (5) for purchased space, the cost of maintaining a cash replacement reserve sufficient to service structural maintenance requirements reflecting the expected performance life of the major capital expense items of the building for the term of the bonded indebtedness. (V.A.C.S. Art. 601b, Sec. 5.342.)

[Sections 2166.454 to 2166.500 reserved for expansion]

#### SUBCHAPTER K. MONUMENTS, MEMORIALS, AND HISTORIC SITES

Sec. 2166.501. MONUMENTS AND MEMORIALS. (a) A monument or memorial for Texas heroes of the Confederate States of America or the Texas War for Independence or to commemorate another event or person of historical significance to Texans and this state may be erected on land owned or acquired by the state or, if a suitable contract can be made for permanent preservation of the monument or memorial, on private property or land owned by the federal government or other states.

(b) The graves of Texans described by Subsection (a) may be located and marked.

(c) The commission shall maintain a monument or memorial erected by this state to commemorate the centenary of Texas' independence.

(d) Before the erection of a new monument or memorial, the commission must obtain the approval of the Texas Historical Commission regarding the form, dimensions, and substance of, and inscriptions or illustrations on, the monument or memorial. (V.A.C.S. Art. 601b, Sec. 5.06.)

Sec. 2166.502. CONTRACTS WITH TEXAS HISTORICAL COMMISSION. The commission may negotiate and contract with the Texas Historical Commission to assist and advise the commission with regard to the:

- (1) proper monuments and memorials to be erected, repaired, or moved to new locations;
- (2) selection of sites for those monuments and memorials; and
- (3) locating and marking of graves. (V.A.C.S. Art. 601b, Sec. 5.07.)

Sec. 2166.503. ACQUISITION OF ARCHAEOLOGICAL, PALEONTOLOGICAL, AND HISTORIC SITES. (a) The commission may acquire by gift, devise, purchase, or exercise of its general power of eminent domain land in this state on which is located:

- (1) a building, site, or landmark of statewide historical significance associated with historic events or personalities;
- (2) a prehistoric ruin;
- (3) a burial ground;
- (4) an archaeological site;
- (5) a vertebrate paleontological site; or
- (6) a site containing fossilized footprints, an inscription made by human agency, or another archaeological, paleontological, or historic feature.



(b) For a historic site, building, or structure, the commission may exercise the power of eminent domain under Subsection (a) only on a proper showing that the exercise is necessary to prevent destruction or deterioration of the historic site, building, or structure.

(c) The commission may request from the Texas Historical Commission a certification or authentication of the worthiness of preservation of a feature listed in Subsection (a). (V.A.C.S. Art. 601b, Sec. 5.08.)

[Sections 2166.504 to 2166.550 reserved for expansion]

#### SUBCHAPTER L. SPECIAL USES AND FACILITIES

Sec. 2166.551. CHILD CARE FACILITY IN STATE BUILDING. (a) The Child Care Development Board shall determine whether a child care facility may be included in a state-owned office building constructed after September 1, 1989, that contains 100,000 square feet or more of net usable space and shall notify the commission of that determination.

(b) The commission shall notify the Child Care Development Board of a project to rehabilitate or renovate substantially an existing state-owned office building containing 100,000 square feet or more of net usable space before developing the rehabilitation or renovation plan.

(c) Not later than the 30th day after the date the Child Care Development Board receives the notice required by Subsection (b), the board shall determine whether a child care facility may be included in the rehabilitation or renovation project and shall notify the commission of that determination.

(d) The commission shall include a child care facility in a construction, rehabilitation, or renovation project if the Child Care Development Board determines that the child care facility should be included. (V.A.C.S. Art. 601b, Sec. 5.01(b).)

Sec. 2166.552. FINE ARTS PROJECTS. (a) A using agency that requests a project analysis by the commission for a building construction project that is estimated to cost more than \$250,000 may specify that up to one percent of the amount of the original project cost estimate be spent for fine arts projects at or near the site of the project.

(b) If the legislature authorizes and appropriates money for a fine arts project, the commission shall cooperate with the Texas Commission on the Arts and consult it for advice in determining how to use the money appropriated for the fine arts project.

(c) In selecting a fine arts project, emphasis should be placed, whenever feasible, on works by living Texas artists. Consideration shall be given to artists of all ethnic origins.

(d) This section does not limit, restrict, or prohibit the commission from including expenditures for fine arts in its original project cost estimate.

(e) In this section, "fine arts project" includes murals, fountains, mosaics, and other aesthetic improvements. (V.A.C.S. Art. 601b, Sec. 5.18.)

Sec. 2166.553. ACQUISITION AND CONSTRUCTION OF BUILDINGS FOR HEALTH AND HUMAN SERVICES AGENCIES. (a) The commission may not acquire or approve construction of a building, including a building the acquisition or construction of which is financed under the Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), to serve the needs of a single health and human services agency unless the agency can provide a reason to the commission for not sharing space in the building with one or more other health and human services agencies.

(b) In this section, "health and human services agency" means the:

- (1) Interagency Council on Early Childhood Intervention Services;
- (2) Texas Department on Aging;
- (3) Texas Commission on Alcohol and Drug Abuse;
- (4) Texas Commission for the Blind;
- (5) Texas Commission for the Deaf and Hearing Impaired;
- (6) Texas Department of Health;

- (7) Texas Department of Human Services;
- (8) Texas Juvenile Probation Commission;
- (9) Texas Department of Mental Health and Mental Retardation;
- (10) Texas Rehabilitation Commission; and
- (11) Department of Protective and Regulatory Services. (V.A.C.S. Art. 601b, Sec. 5.341.)

## CHAPTER 2167. LEASE OF SPACE FOR STATE AGENCIES

## SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 2167.001. APPLICABILITY
- Sec. 2167.002. PREREQUISITES FOR LEASING SPACE
- Sec. 2167.003. FIRST CONSIDERATION TO HISTORIC STRUCTURE
- Sec. 2167.004. LEASING SPACE FOR HEALTH AND HUMAN SERVICES AGENCIES
- Sec. 2167.005. DELEGATION OF AUTHORITY TO INSTITUTIONS OF HIGHER EDUCATION
- Sec. 2167.006. ELIMINATION OF BARRIERS TO PERSONS WITH DISABILITIES IN LEASED BUILDINGS
- Sec. 2167.007. LEASING SERVICES TO STATE AGENCIES
- Sec. 2167.008. RULES

[Sections 2167.009 to 2167.050 reserved for expansion]

## SUBCHAPTER B. PROCEDURES FOR LEASING SPACE; LEASE CONTRACT

- Sec. 2167.051. LEASING SPACE FROM ANOTHER GOVERNMENTAL ENTITY
- Sec. 2167.052. LEASING SPACE FROM PRIVATE SOURCE
- Sec. 2167.053. LEASING SPACE THROUGH COMPETITIVE BIDDING
- Sec. 2167.054. LEASING SPACE THROUGH COMPETITIVE SEALED PROPOSALS
- Sec. 2167.055. CONTRACT FOR LEASE OF SPACE
- Sec. 2167.056. OPTION TO PURCHASE

[Sections 2167.057 to 2167.100 reserved for expansion]

## SUBCHAPTER C. COMMISSION AND STATE AGENCY POWERS AND DUTIES RELATED TO LEASED SPACE

- Sec. 2167.101. CERTIFICATION OF AVAILABLE MONEY
- Sec. 2167.102. REMEDIAL ACTION AGAINST LESSOR
- Sec. 2167.103. RECORDS
- Sec. 2167.104. SUBLEASE TO CHILD CARE PROVIDER

## CHAPTER 2167. LEASE OF SPACE FOR STATE AGENCIES

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2167.001. APPLICABILITY. (a) This chapter applies to:

- (1) office space;
- (2) warehouse space;
- (3) laboratory space;
- (4) storage space exceeding 1,000 gross square feet; and
- (5) a combination of those kinds of space.

(b) This chapter does not apply to:

- (1) aircraft hangar space;
- (2) radio antenna space;
- (3) boat storage space;
- (4) vehicle parking space;

(5) residential space for a Texas Department of Mental Health and Mental Retardation program;

(6) residential space for a Texas Youth Commission program;

(7) space to be used for less than one month for meetings, conferences, conventions, seminars, displays, examinations, auctions, or similar purposes;

(8) district office space for members of the legislature; or

(9) space used by the Texas Employment Commission. (V.A.C.S. Art. 601b, Secs. 6.01, 6.11.)

Sec. 2167.002. PREREQUISITES FOR LEASING SPACE. The commission may lease space for a state agency in accordance with this chapter and the agency's specifications if:

(1) state-owned space is not otherwise available to the agency; and

(2) the agency has verified it has money available to pay for the lease. (V.A.C.S. Art. 601b, Sec. 6.05(a).)

Sec. 2167.003. FIRST CONSIDERATION TO HISTORIC STRUCTURE. (a) In leasing space for the use of a state agency, the commission shall give first consideration to a building that is a historic structure under Section 442.001 or to a building that has been designated a landmark by a local governing authority, if:

(1) the building meets requirements and specifications; and

(2) the cost is not substantially higher than the cost for other available buildings that meet requirements and specifications.

(b) When it considers leasing space for a state agency, the commission shall notify each individual and organization that is:

(1) on a list furnished to the commission by the Texas Historical Commission under Section 442.005; and

(2) in the county in which the commission is considering leasing space.

(c) At the end of a biennium, the commission shall report to the legislature the commission's reasons for rejecting during the biennium the lease of any historic structure that was offered in a bid to lease space to the state. (V.A.C.S. Art. 601b, Sec. 6.05(j).)

Sec. 2167.004. LEASING SPACE FOR HEALTH AND HUMAN SERVICES AGENCIES. (a) The commission may not lease office space to serve the needs of a single health and human services agency unless the agency provides the commission with a reason for not sharing the office space with one or more other health and human services agencies.

(b) In this section, "health and human services agency" means the:

(1) Interagency Council on Early Childhood Intervention Services;

(2) Texas Department on Aging;

(3) Texas Commission on Alcohol and Drug Abuse;

(4) Texas Commission for the Blind;

(5) Texas Commission for the Deaf and Hearing Impaired;

(6) Texas Department of Health;

(7) Texas Department of Human Services;

(8) Texas Juvenile Probation Commission;

(9) Texas Department of Mental Health and Mental Retardation;

(10) Texas Rehabilitation Commission; or

(11) Department of Protective and Regulatory Services. (V.A.C.S. Art. 601b, Sec. 6.031.)

Sec. 2167.005. DELEGATION OF AUTHORITY TO INSTITUTIONS OF HIGHER EDUCATION. The commission may delegate to an institution of higher education the authority to enter into lease contracts for space for which payments are not made from money appropriated from the general revenue fund. (V.A.C.S. Art. 601b, Sec. 6.111 (part).)

Sec. 2167.006. **ELIMINATION OF BARRIERS TO PERSONS WITH DISABILITIES IN LEASED BUILDINGS.** (a) The commission may not enter a lease contract under this chapter unless it complies with the architectural barriers law, Article 9102, Revised Statutes.

(b) An institution of higher education may not enter a lease contract under Section 2167.005 unless the institution complies with the architectural barriers law, Article 9102, Revised Statutes. (V.A.C.S. Art. 601b, Secs. 6.06; 6.111 (part).)

Sec. 2167.007. **LEASING SERVICES TO STATE AGENCIES.** (a) This chapter does not prohibit the commission from providing leasing services to a state agency otherwise excluded from its requirements.

(b) Services performed under Subsection (a) are not subject to the interagency cooperation law, Chapter 771.

(c) The commission shall establish a system of charges and billings to assure the recovery of the cost of providing services under Subsection (a) and shall submit, after the close of each month, a purchase voucher or journal voucher to an agency for which services were provided. (V.A.C.S. Art. 601b, Sec. 6.13.)

Sec. 2167.008. **RULES.** The commission shall adopt rules necessary to administer this chapter. (V.A.C.S. Art. 601b, Sec. 6.12.)

[Sections 2167.009 to 2167.050 reserved for expansion]

#### SUBCHAPTER B. PROCEDURES FOR LEASING SPACE; LEASE CONTRACT

Sec. 2167.051. **LEASING SPACE FROM ANOTHER GOVERNMENTAL ENTITY.** Space may be leased:

- (1) through an interagency contract from another state agency; or
- (2) through a negotiated contract from:
  - (A) the federal government;
  - (B) a political subdivision, including a county, municipality, school district, water or irrigation district, hospital district, council of governments, or regional planning commission; or
  - (C) a statewide Texas public retirement system in a commercial building that is completely owned, directly or indirectly, by the retirement system. (V.A.C.S. Art. 601b, Sec. 6.05(b).)

Sec. 2167.052. **LEASING SPACE FROM PRIVATE SOURCE.** (a) Space may be leased from a private source through:

- (1) competitive bidding; or
- (2) competitive sealed proposals under Section 2167.054.

(b) The commission may negotiate for space on making a written determination that competition is not available. (V.A.C.S. Art. 601b, Sec. 6.05(c).)

Sec. 2167.053. **LEASING SPACE THROUGH COMPETITIVE BIDDING.** (a) When space is leased through competitive bidding, the commission shall determine the lowest and best bid after considering moving costs, the cost of time lost in moving, the cost of telecommunications services, and other relevant factors.

(b) The commission shall send to the leasing state agency:

- (1) a copy of all bids received; and
- (2) the commission's recommended award.

(c) If, after review of the bids and evaluation of all relevant factors, the leasing state agency's opinion is that the bid selected by the commission is not the lowest and best bid, it may file with the commission a written recommendation that the award be made to a bidder other than the commission's recommended bidder. The leasing state agency's recommendation must contain the agency's justification for its recommendation and a complete explanation of all factors it considered.

(d) The commission shall fully consider the leasing state agency's recommendation and, if it does not agree, shall notify the agency of its disagreement in writing. The leasing state agency and the commission shall attempt to agree on the award.

(e) If the commission and the leasing state agency do not agree within 30 days, all bids and pertinent documents shall be sent to the governor. The governor shall designate the bidder to which the award shall be made. (V.A.C.S. Art. 601b, Sec. 6.05(d).)

**Sec. 2167.054. LEASING SPACE THROUGH COMPETITIVE SEALED PROPOSALS.**

(a) The commission may lease space using competitive sealed proposals if the commission first determines that competitive bidding is not practical or is disadvantageous to the state.

(b) The commission shall solicit proposals by publishing a notice of request for proposals in:

(1) the Texas Register; and

(2) a newspaper of general circulation in the county in which the space is to be leased.

(c) The commission shall open each proposal in a manner that does not disclose the contents of the proposal during the process of negotiating with competing offerors.

(d) As provided in a request for proposals and under rules adopted by the commission, the commission may discuss acceptable or potentially acceptable proposals with offerors to assess an offeror's ability to meet the solicitation requirements and to obtain the most advantageous lease contract for the state. The commission shall invite a leasing state agency to participate in discussions and negotiations conducted under this section. After receiving a proposal but before making an award, the commission may permit the offeror to revise the proposal to obtain the best final proposal.

(e) The commission may not disclose information derived from proposals submitted from competing offerors in conducting discussions under Subsection (d).

(f) The commission shall provide each offeror whose proposal meets the minimum requirements in the request for proposals a reasonable opportunity to discuss and revise its proposal.

(g) The commission shall make a written award of a lease to the offeror whose proposal is the most advantageous to the state, considering price and the evaluation factors in the request for proposals. The commission may not use other factors or criteria in its evaluation. The commission shall state in writing in the contract file the reasons for which an award is made.

(h) The commission shall refuse all proposals if it determines that none of the proposals is acceptable.

(i) If the competitive sealed proposal procedure for leasing space is used by an institution of higher education that has been delegated leasing authority under Section 2167.005, the institution:

(1) must first determine that competitive bidding is not practical or is disadvantageous to the state; and

(2) shall follow the procedures outlined by this section and any rules adopted by the commission. (V.A.C.S. Art. 601b, Sec. 6.051.)

**Sec. 2167.055. CONTRACT FOR LEASE OF SPACE.** (a) In a contract by the commission for the lease of space under this chapter, the state, acting through the commission, is the lessee.

(b) The lease contract must reflect the provisions contained in the invitation for bids or request for proposals, the successful bid or proposal, and the award of the contract.

(c) A lease contract may:

(1) provide for an original term that does not exceed 10 years; and

(2) include options to renew for as many terms that do not exceed 10 years each as the commission considers to be in the state's best interest.

(d) A lease contract that does not contain an option to renew may, on agreement of the parties, be renewed once under the provisions of the original contract for a term that does not exceed one year.

(e) A lease contract is contingent on the availability of money appropriated by the legislature to pay for the lease.

(f) The obligation of the lessor to provide lease space and of the commission to accept the space is binding on the award of the contract. (V.A.C.S. Art. 601b, Secs. 6.05(e), (f), (g), (h), (i).)

Sec. 2167.056. **OPTION TO PURCHASE.** (a) If the commission considers it advisable, the commission may lease space for a state agency under a contract that contains an option for the commission to purchase the space subject to the legislature's appropriation of money for the purchase.

(b) A lease contract containing the option must indicate:

(1) the amount that will accumulate and be credited toward the purchase at various times during the lease term; and

(2) the purchase price of the property at the beginning of each fiscal biennium during the lease term. (V.A.C.S. Art. 601b, Sec. 6.09.)

[Sections 2167.057 to 2167.100 reserved for expansion]

#### SUBCHAPTER C. COMMISSION AND STATE AGENCY POWERS AND DUTIES RELATED TO LEASED SPACE

Sec. 2167.101. **CERTIFICATION OF AVAILABLE MONEY.** A state agency occupying space leased under this chapter shall certify to the commission, at least 60 days before the beginning of each fiscal biennium during the lease term, that money is available to pay for the lease. (V.A.C.S. Art. 601b, Sec. 6.08.)

Sec. 2167.102. **REMEDIAL ACTION AGAINST LESSOR.** (a) When a state agency occupying leased space is aware of circumstances that require remedial action against the lessor, the agency shall notify the commission.

(b) The commission may investigate the circumstances and the lessor's performance under the contract.

(c) The attorney general on the commission's request shall assist the commission in protecting the state's interest under a lease contract. (V.A.C.S. Art. 601b, Sec. 6.07.)

Sec. 2167.103. **RECORDS.** To efficiently maintain a space management system, the commission shall maintain records of the amount and cost of space under lease by the commission and may collect other information that it considers necessary. A state agency shall cooperate with the commission in securing this information. (V.A.C.S. Art. 601b, Sec. 6.10.)

Sec. 2167.104. **SUBLEASE TO CHILD CARE PROVIDER.** (a) Subject to restrictions imposed by a lease or other enforceable contract, the commission, at the direction of the Child Care Development Board and at the request of the occupying agency, shall sublease part of a space leased under this chapter to a child care provider for the operation of a child care facility.

(b) Chapter 663 applies to the establishment and operation of the child care facility, except as provided by this section.

(c) This section does not affect the duties of the commission regarding child care facilities in state-owned buildings and potential child care facility sites in state-owned buildings under Chapter 663, 2165, or 2166.

(d) The occupying agency and the Child Care Development Board may agree to:

(1) procedures relating to the selection of the child care provider;

(2) granting some preference in enrollment to children of officers and employees of the occupying state agency; and

(3) any other matter regarding the operation of the child care facility.

(e) The commission shall sublease space under this section to a child care provider approved by the Child Care Development Board at a rate set by the board.

(f) In leasing space under this chapter, the commission shall, whenever possible, enter into a lease contract that allows for subleasing space to a child care provider. (V.A.C.S. Art. 601b, Sec. 6.14.)

[Chapters 2168 to 2169 reserved for expansion]

**CHAPTER 2170. TELECOMMUNICATIONS SERVICES**

**SUBCHAPTER A. GENERAL PROVISIONS**

- Sec. 2170.001. DEFINITIONS
- Sec. 2170.002. COMMISSION RESPONSIBLE FOR OBTAINING TELECOMMUNICATIONS SERVICES
- Sec. 2170.003. OWNERSHIP OR LEASE OF NECESSARY EQUIPMENT
- Sec. 2170.004. CONTRACTS WITH ENTITIES OTHER THAN STATE AGENCIES
- Sec. 2170.005. POLICIES, GUIDELINES, AND OPERATING PROCEDURES
- Sec. 2170.006. COST-EFFECTIVENESS OF SYSTEM
- Sec. 2170.007. RESTRICTION ON COMMISSION ACTIONS
- Sec. 2170.008. RATE INTERVENTION

[Sections 2170.009 to 2170.050 reserved for expansion]

**SUBCHAPTER B. SYSTEM OF TELECOMMUNICATIONS SERVICES**

- Sec. 2170.051. MANAGEMENT OF SYSTEM
- Sec. 2170.052. BALANCING TECHNOLOGICAL ADVANCEMENTS AND EXISTING FACILITIES
- Sec. 2170.053. SHARING OF SERVICES
- Sec. 2170.054. DEVELOPMENT OF SYSTEM
- Sec. 2170.055. REVIEW AND COMMENT BY EDUCATION AGENCIES
- Sec. 2170.056. COSTS TO STATE OF PARALLEL TOLLS
- Sec. 2170.057. PAYMENT FOR SERVICES
- Sec. 2170.058. USE OF SYSTEM BY CERTAIN STUDENTS
- Sec. 2170.059. CENTRALIZED CAPITOL COMPLEX TELEPHONE SYSTEM
- Sec. 2170.060. DEVELOPMENT OF PLAN FOR STATE TELECOMMUNICATIONS NETWORK

**CHAPTER 2170. TELECOMMUNICATIONS SERVICES**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 2170.001. DEFINITIONS. (a) In this chapter:

(1) "Telecommunications services" means intercity communications facilities or services. The term does not include single agency point-to-point radio systems or facilities or services of criminal justice information communication systems.

(2) "Consolidated telecommunications system" means the network of telecommunications services serving the state government.

(b) In this section, any dedicated circuits included as part of the consolidated telecommunications system are considered to begin and end at the main connecting frame. (V.A.C.S. Art. 601b, Sec. 10.01.)

Sec. 2170.002. COMMISSION RESPONSIBLE FOR OBTAINING TELECOMMUNICATIONS SERVICES. The commission is the state agency responsible for obtaining telecommunications services. (V.A.C.S. Art. 601b, Sec. 10.08.)

Sec. 2170.003. OWNERSHIP OR LEASE OF NECESSARY EQUIPMENT. The commission may own, lease, or lease-purchase in accordance with Chapters 2155, 2156, 2157, and 2158 any or all of the facilities or equipment necessary to provide telecommunications services. (V.A.C.S. Art. 601b, Sec. 10.02(e) (part).)

Sec. 2170.004. CONTRACTS WITH ENTITIES OTHER THAN STATE AGENCIES. The commission may contract for use of the consolidated telecommunications system with:

- (1) each house of the legislature;
- (2) a legislative agency;
- (3) an agency that is not a state agency as defined by Section 2151.002; and
- (4) a political subdivision, including a county, municipality, or district. (V.A.C.S. Art. 601b, Sec. 10.07.)

Sec. 2170.005. **POLICIES, GUIDELINES, AND OPERATING PROCEDURES.** (a) To ensure efficient operation of the consolidated telecommunications system at minimum cost to the state, the commission shall adopt and disseminate to all agencies appropriate guidelines, operating procedures, and telephone directories.

(b) Each agency shall comply with the policies, guidelines, and operating procedures. (V.A.C.S. Art. 601b, Secs. 10.03(a), (b) (part).)

Sec. 2170.006. **COST-EFFECTIVENESS OF SYSTEM.** (a) The commission, with the advice of the state auditor, shall maintain records relating to the consolidated telecommunications system necessary to enable the commission to analyze the cost-effectiveness of the system to state agencies.

(b) The commission shall advise the legislature at each session about the system's cost-effectiveness. (V.A.C.S. Art. 601b, Sec. 10.03(b) (part).)

Sec. 2170.007. **RESTRICTION ON COMMISSION ACTIONS.** The commission may not take any action under this chapter, including adopting a policy, guideline, or procedure, that is inconsistent with a guideline or rule adopted by the Department of Information Resources. (V.A.C.S. Art. 601b, Sec. 10.035.)

Sec. 2170.008. **RATE INTERVENTION.** (a) If the commission determines there is sufficient economic impact on state government, the commission may intervene on behalf of state agencies in telecommunications rate cases and may hire special counsel and expert witnesses to prepare and present testimony.

(b) The attorney general shall represent the commission before the courts in all appeals from rate cases in which the commission intervenes. (V.A.C.S. Art. 601b, Sec. 10.11.)

[Sections 2170.009 to 2170.050 reserved for expansion]

#### SUBCHAPTER B. SYSTEM OF TELECOMMUNICATIONS SERVICES

Sec. 2170.051. **MANAGEMENT OF SYSTEM.** (a) The commission shall manage the operation of a system of telecommunications services for all state agencies. Each agency shall identify its particular requirements for telecommunications services and the site at which the services are to be provided.

(b) The commission shall fulfill the telecommunications requirements of each state agency to the extent possible and to the extent that money is appropriated or available for that purpose. (V.A.C.S. Art. 601b, Secs. 10.02(a), (b).)

Sec. 2170.052. **BALANCING TECHNOLOGICAL ADVANCEMENTS AND EXISTING FACILITIES.** In the planning, design, implementation, and operation of the consolidated telecommunications system, the commission shall maintain an appropriate balance between the adoption of technological advancements and the efficient use of existing facilities and services to avoid misapplication of state money and degradation or loss of the integrity of existing systems and facilities. (V.A.C.S. Art. 601b, Sec. 10.04.)

Sec. 2170.053. **SHARING OF SERVICES.** (a) To avoid waste of state money and personnel, telecommunications services shall be provided on an integrated or shared basis, or both, to the extent feasible and advisable, among entities authorized to use the consolidated telecommunications system under this chapter.

(b) Sharing or integrated use does not constitute the resale or carriage of services and does not subject the system to regulation or reporting under the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 601b, Sec. 10.05(a).)

Sec. 2170.054. **DEVELOPMENT OF SYSTEM.** (a) The commission, Department of Information Resources, and comptroller shall jointly develop functional requirements for a



statewide system of telecommunications services for all state agencies. Existing networks, as configured on September 1, 1991, of institutions of higher education are exempt.

(b) The commission, Department of Information Resources, and comptroller shall develop requests for information and proposals for a statewide system of telecommunications services for all state agencies.

(c) The commission, Department of Information Resources, and comptroller shall negotiate rates and execute contracts with telecommunications service providers for services. Those entities may:

(1) acquire transmission facilities by purchase, lease, or lease-purchase in accordance with Chapters 2155–2158; and

(2) develop, establish, and maintain carrier systems necessary to the operation of the telecommunications system. (V.A.C.S. Art. 601b, Secs. 10.02(c), (d), (e) (part).)

Sec. 2170.055. REVIEW AND COMMENT BY EDUCATION AGENCIES. (a) A representative of the Central Education Agency and a representative of the Texas Higher Education Coordinating Board shall review and comment on telecommunications plans developed under Section 2170.054.

(b) The participation of the Central Education Agency and the Texas Higher Education Coordinating Board is for the limited purpose of coordinating the statewide telecommunications system developed under this chapter with the telecommunications systems of educational entities that are not subject to this chapter.

(c) A representative of the Central Education Agency or the Texas Higher Education Coordinating Board under this section acts in an advisory capacity only and is not entitled to vote on decisions made under this chapter. (V.A.C.S. Art. 601b, Sec. 10.02(g).)

Sec. 2170.056. COSTS TO STATE OF PARALLEL TOLLS. All contracts with telecommunications carriers shall provide that the commission or any participating agency may obtain any information relating to the costs to the state of parallel tolls. (V.A.C.S. Art. 601b, Sec. 10.02(f).)

Sec. 2170.057. PAYMENT FOR SERVICES. (a) The commission shall develop a system of billings and charges for services provided in operating and administering the consolidated telecommunications system that allocates the total state cost to each entity served by the system based on proportionate usage.

(b) The comptroller shall establish in the state treasury a revolving fund account for the administration of this chapter. The account shall be used as a depository for money received from entities served.

(c) To provide an adequate cash flow as necessary for purposes of this chapter, using state agencies and other entities, on proper notification, shall make monthly payments into the telecommunications revolving fund account from appropriated or other available money. The legislature may appropriate money for operating the system directly to the commission, in which case the revolving fund account shall be used to receive money due from local governmental entities and other agencies to the extent that their money is not subject to legislative appropriation.

(d) The commission shall maintain in the revolving fund account sufficient amounts to pay the bills of the consolidated telecommunications system and the centralized capital complex telephone system. The commission shall certify amounts that exceed this amount to the comptroller, and the comptroller shall transfer the excess amounts to the credit of the statewide network applications account established by Section 22A, Information Resources Management Act (Article 4413(32j), Revised Statutes). (V.A.C.S. Art. 601b, Sec. 10.06.)

Sec. 2170.058. USE OF SYSTEM BY CERTAIN STUDENTS. (a) An institution of higher education under Section 61.003, Education Code, that is authorized to use the system of telecommunications services established under this chapter may allow students of the institution who reside in housing for which the institution provides telephone service to use the system of telecommunications services. An institution shall recover from a student who chooses to use the system the full pro rata cost attributable to that student's use, including costs identifiable for interconnection to and use of the local publicly switched network.

(b) The commission shall adopt rules that govern student access to the system, including:

- (1) times of access to the system; and
- (2) the full recovery of actual costs from each student who uses the system.

(c) In consideration of the duties and responsibilities given the commission under this subtitle, it is the policy of this state that a state agency or unit of state government may not provide telecommunications products or services to the general public in competition with private enterprise unless there is a finding that providing the products or services is in the public interest. This subsection does not prohibit students who reside in housing for which institutions of higher education provide telephone service from using service provided under this section. (V.A.C.S. Art. 601b, Sec. 10.071.)

Sec. 2170.059. **CENTRALIZED CAPITOL COMPLEX TELEPHONE SYSTEM.** (a) The commission shall provide centralized telephone service for state agencies, each house of the legislature, and legislative agencies in the capitol complex. State agencies in the capitol complex shall use the service. Each house of the legislature and each legislative agency shall use the service at the discretion of the legislature. The commission may provide the service to other state agencies that subscribe to it.

(b) Each using entity shall make monthly payments to the commission when billed by the commission.

(c) Each using entity may arrange for its own terminal telephone equipment, but the equipment must be compatible with the centralized telephone service. The commission shall make terminal equipment available for using entities that choose to use that terminal equipment.

(d) The commission annually shall prepare and issue a revised centralized telephone service directory not later than March 31. (V.A.C.S. Art. 601b, Sec. 10.09.)

Sec. 2170.060. **DEVELOPMENT OF PLAN FOR STATE TELECOMMUNICATIONS NETWORK.** (a) The commission, the Department of Information Resources, and the comptroller shall develop, in coordination with The Texas A&M University System, The University of Texas System, other institutions of higher education, and other state agencies, a plan for a state telecommunications network that will effectively and efficiently meet the long-term requirements of state government for voice, video, and computer communications.

(b) The plan should recognize that all state agencies, including institutions of higher education, are a single entity for purposes of purchasing and determining tariffs.

(c) The plan must incorporate efficiencies obtained through the use of shared transmission services and open systems architecture as they become available, building on existing systems as appropriate. The developers of the plan shall make use of the technical expertise of state agencies, including institutions of higher education. (V.A.C.S. Art. 601b, Sec. 10.05(b) (part).)

#### CHAPTER 2171. TRAVEL AND VEHICLE FLEET SERVICES

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2171.001. **TRAVEL DIVISION**

Sec. 2171.002. **RULES**

[Sections 2171.003 to 2171.050 reserved for expansion]

##### SUBCHAPTER B. TRAVEL SERVICES

Sec. 2171.051. **PROVISION OF TRAVEL-RELATED SERVICES**

Sec. 2171.052. **CONTRACTS WITH PROVIDERS OF TRAVEL SERVICES**

Sec. 2171.053. **CONTRACTS NOT SUBJECT TO COMPETITIVE BIDDING REQUIREMENTS**

Sec. 2171.054. **TRAVEL VOUCHER AUDITS**

Sec. 2171.055. **PARTICIPATION BY STATE AGENCIES IN TRAVEL SERVICES CONTRACTS**

Sec. 2171.056. **PURCHASE OF OR REIMBURSEMENT FOR TRANSPORTATION IN AMOUNT EXCEEDING CONTRACTED RATES**

[Sections 2171.057 to 2171.100 reserved for expansion]

SUBCHAPTER C. VEHICLE FLEET SERVICES

Sec. 2171.101. VEHICLE REPORTING SYSTEM

Sec. 2171.102. MAINTENANCE OF STATE VEHICLES

Sec. 2171.103. FACILITATION OF CONVERSION TO AND USE OF ALTERNATIVE FUELS

CHAPTER 2171. TRAVEL AND VEHICLE FLEET SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2171.001. TRAVEL DIVISION. The travel division of the commission is composed of the central travel office and the office of vehicle fleet management. (V.A.C.S. Art. 601b, Sec. 14.01 (part).)

Sec. 2171.002. RULES. The commission shall adopt rules to implement this chapter, including rules related to:

- (1) the structure of the commission's travel agency contracts;
- (2) the procedures the commission uses in requesting and evaluating bids or proposals for travel agency contracts; and
- (3) the use by state agencies of negotiated contract rates for travel services. (V.A.C.S. Art. 601b, Sec. 14.01 (part).)

[Sections 2171.003 to 2171.050 reserved for expansion]

SUBCHAPTER B. TRAVEL SERVICES

Sec. 2171.051. PROVISION OF TRAVEL-RELATED SERVICES. (a) The central travel office shall monitor travel reservations and other travel arrangements required for business travel by a state employee or state agency and shall provide travel-related services as provided by this chapter.

(b) State agencies shall use the office's services to the maximum extent consistent with improved economy and efficiency.

(c) After approval by the executive director, the central travel office shall designate state agencies that may use the services of the office. The executive director shall approve the use of those services by the designated state agencies after the director of the travel division certifies to the executive director that the central travel office is capable of providing those services. (V.A.C.S. Art. 601b, Sec. 14.02(a).)

Sec. 2171.052. CONTRACTS WITH PROVIDERS OF TRAVEL SERVICES. (a) The central travel office may negotiate contracts with private travel agents, with travel and transportation providers, and with credit card companies that provide travel services and other benefits to the state.

(b) The commission shall make contracts with more than one provider of travel agency services. (V.A.C.S. Art. 601b, Sec. 14.02(b) (part).)

Sec. 2171.053. CONTRACTS NOT SUBJECT TO COMPETITIVE BIDDING REQUIREMENTS. Contracts under this subchapter are not subject to the competitive bidding requirements imposed under Chapters 2155–2158. (V.A.C.S. Art. 601b, Sec. 14.02(b) (part).)

Sec. 2171.054. TRAVEL VOUCHER AUDITS. The comptroller shall, under Chapter 403, audit travel vouchers for compliance with rules adopted to enforce this subchapter. (V.A.C.S. Art. 601b, Sec. 14.02(b) (part).)

Sec. 2171.055. PARTICIPATION BY STATE AGENCIES IN TRAVEL SERVICES CONTRACTS. (a) State agencies in the executive branch of state government shall participate under commission rules in the commission's contracts for travel services.

(b) An institution of higher education as defined by Section 61.003, Education Code, is not required to participate in the commission's contracts for travel agency services or other travel

services purchased from funds other than general revenue funds or educational and general funds as defined by Section 51.009, Education Code.

(c) The commission may provide by rule for exemptions from required participation.

(d) Agencies of the state that are not required to participate in commission contracts for travel services may participate as provided by Section 2171.051. (V.A.C.S. Art. 601b, Sec. 14.02(c).)

Sec. 2171.056. PURCHASE OF OR REIMBURSEMENT FOR TRANSPORTATION IN AMOUNT EXCEEDING CONTRACTED RATES. (a) This section applies only to a state agency in the executive branch of state government that is required to participate in the commission's contracts for travel services.

(b) Except as provided by commission rule, a state agency may not:

(1) purchase commercial airline or rental car transportation if the amount of the purchase exceeds the amount of the central travel office's contracted fares or rates; or

(2) reimburse a person for the purchase of commercial airline or rental car transportation for the amount that exceeds the amount of the central travel office's contracted fares or rates.

(c) The commission shall educate state agencies about this section.

(d) The comptroller shall audit travel vouchers under Chapter 403 for compliance with this section.

(e) The commission shall adopt rules related to exemptions from the prohibition prescribed by Subsection (b). To facilitate the audit of the travel vouchers, the commission shall consult with the comptroller before the commission adopts rules or procedures under Subsection (b). (V.A.C.S. Art. 601b, Secs. 14.01 (part), 14.02(d), (e).)

[Sections 2171.057 to 2171.100 reserved for expansion]

#### SUBCHAPTER C. VEHICLE FLEET SERVICES

Sec. 2171.101. VEHICLE REPORTING SYSTEM. (a) The office of vehicle fleet management shall establish a vehicle reporting system to assist each state agency in the management of its vehicle fleet.

(b) The office shall:

(1) develop automated information retrieval systems to implement the reporting system; and

(2) maintain a complete inventory of agency vehicles by class of vehicle.

(c) The office shall determine the average cost of operation for each class of vehicle. (V.A.C.S. Art. 601b, Sec. 14.03(a).)

Sec. 2171.102. MAINTENANCE OF STATE VEHICLES. (a) The office of vehicle fleet management shall provide routine periodic maintenance service to state agencies located in Travis County. The office shall charge a fee for the service.

(b) The office shall negotiate contracts for major overhauls and other extensive mechanical work.

(c) Contracts entered into under this section are not subject to the competitive bidding requirements imposed under Chapters 2155, 2156, 2157, and 2158. (V.A.C.S. Art. 601b, Sec. 14.03(b).)

Sec. 2171.103. FACILITATION OF CONVERSION TO AND USE OF ALTERNATIVE FUELS. (a) The office of vehicle fleet management may act as necessary to encourage and facilitate the conversion and use of motor vehicles that are capable of using alternative fuels, especially compressed natural gas.

(b) The office may:

(1) establish centralized refueling stations throughout the state;

(2) operate regional conversion and repair facilities; and

(3) provide all services and support necessary to expedite the use of compressed natural gas or other alternative fuels by state agencies as required by Subchapter A, Chapter 2158, and by school districts as required by Section 2155.201. (V.A.C.S. Art. 601b, Sec. 14.03(c).)

CHAPTER 2172. MISCELLANEOUS GENERAL SERVICES PROVIDED BY COMMISSION

Sec. 2172.001. CENTRAL SUPPLY STORE  
Sec. 2172.002. BUSINESS MACHINE REPAIR  
Sec. 2172.003. PRINTING  
Sec. 2172.004. ARCHIVES  
Sec. 2172.005. DONATIONS

CHAPTER 2172. MISCELLANEOUS GENERAL  
SERVICES PROVIDED BY COMMISSION

Sec. 2172.001. CENTRAL SUPPLY STORE. (a) The commission shall operate a central supply store at which only state agencies, the legislature, and legislative agencies may obtain small supply items.

(b) After the close of each month, the commission shall send a purchase voucher to each using entity for the supply items purchased. (V.A.C.S. Art. 601b, Sec. 11.04.)

Sec. 2172.002. BUSINESS MACHINE REPAIR. (a) The commission shall maintain a facility for repairing office machines and shall offer repair services to the following entities located in Austin:

- (1) state agencies;
- (2) the legislature; and
- (3) legislative agencies.

(b) Using entities shall pay the commission for repair services by vouchers prepared and sent to the using entity by the commission.

(c) The commission may not repair or maintain a privately owned machine. (V.A.C.S. Art. 601b, Sec. 11.03.)

Sec. 2172.003. PRINTING. (a) The commission may:

- (1) assist a state agency with the agency's printing activities; and
- (2) assess and evaluate those activities.

(b) The commission may recommend changes intended to increase the productivity and cost-effectiveness of printing operations of state agencies. Recommendations may be reported periodically to the appropriate associate deputy director under commission rules.

(c) The commission may:

- (1) adopt standard accounting procedures that permit evaluating and comparing the costs of printing operations conducted by state agencies;
- (2) coordinate activities among state print shops;
- (3) review state agency requisitions for new printing shop equipment;
- (4) assist state agencies in expediting the production of printing and graphic arts;
- (5) maintain a roster of state print shops and their equipment, facilities, and special capabilities;
- (6) serve as a clearinghouse for private vendors of printing services to ensure that printing services and supplies are purchased in the most efficient and economical manner;
- (7) coordinate the consolidation of print shops operated by state agencies when the agencies involved determine that consolidation is appropriate; and
- (8) develop procedures for the recovery of the commission's reasonable costs under Chapter 317 from amounts appropriated to the state agencies for which identified savings are achieved.

(d) This section does not apply to an institution of higher education. (V.A.C.S. Art. 601b, Sec. 11.06.)

Sec. 2172.004. ARCHIVES. The commission may store and display the archives of Texas. (V.A.C.S. Art. 601b, Sec. 5.09.)

Sec. 2172.005. DONATIONS. The commission may solicit and accept private donations for the Congress Avenue beautification program, a capital improvements project in Austin. The program includes improvements in the capitol complex generally north of the Capitol along either side of Congress Avenue. (V.A.C.S. Art. 601b, Sec. 5.33.)

[Chapters 2173 to 2174 reserved for expansion]

#### CHAPTER 2175. SURPLUS AND SALVAGE PROPERTY

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2175.001. DEFINITIONS

Sec. 2175.002. ADMINISTRATION OF CHAPTER

Sec. 2175.003. SEPARATE AND INDEPENDENT OPERATION OF SURPLUS AND SALVAGE PROPERTY DIVISION

Sec. 2175.004. CIVIL AIR PATROL; VOLUNTEER FIRE DEPARTMENTS

[Sections 2175.005 to 2175.060 reserved for expansion]

##### SUBCHAPTER B. COMMISSION POWERS AND DUTIES

Sec. 2175.061. RULES, FORMS, AND PROCEDURES

Sec. 2175.062. MAILING LIST; LIST OF PROSPECTIVE BUYERS

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Sec. 2175.065. DELEGATION OF AUTHORITY TO STATE AGENCY

[Sections 2175.066 to 2175.120 reserved for expansion]

##### SUBCHAPTER C. DIRECT TRANSFER OF SURPLUS OR SALVAGE PROPERTY

Sec. 2175.121. STATE AGENCY NOTICE TO COMMISSION

Sec. 2175.122. COMMISSION NOTICE TO OTHER ENTITIES

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Sec. 2175.124. NOTICE OF TRANSFER TO COMPTROLLER AND COMMISSION; ADJUSTMENT OF APPROPRIATIONS AND INVENTORY

Sec. 2175.125. PRIORITY FOR TRANSFER TO STATE AGENCY

[Sections 2175.126 to 2175.180 reserved for expansion]

##### SUBCHAPTER D. DISPOSITION OF SURPLUS OR SALVAGE PROPERTY BY COMPETITIVE BIDDING

Sec. 2175.181. DISPOSITION BY COMPETITIVE BIDDING OR AUCTION

Sec. 2175.182. PURCHASER'S FEE

Sec. 2175.183. ADVERTISEMENT OF SALE

Sec. 2175.184. REPORTING SALE; INVENTORY ADJUSTMENT

Sec. 2175.185. PROCEEDS OF SALE

Sec. 2175.186. PURCHASER'S TITLE

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Sec. 2175.241. WHEN SURPLUS OR SALVAGE PROPERTY MAY BE DESTROYED; REPORT OF DESTRUCTION

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[Sections 2175.243 to 2175.300 reserved for expansion]

**SUBCHAPTER F. EXCEPTIONS**

- Sec. 2175.301. SURPLUS PROPERTY OF LEGISLATURE
- Sec. 2175.302. EXCEPTION FOR ELEEMOSYNARY INSTITUTIONS AND INSTITUTIONS AND AGENCIES OF HIGHER EDUCATION
- Sec. 2175.303. EXCEPTION FOR CERTAIN PRODUCTS

[Sections 2175.304 to 2175.360 reserved for expansion]

**SUBCHAPTER G. FEDERAL SURPLUS PROPERTY**

- Sec. 2175.361. DEFINITIONS
- Sec. 2175.362. DESIGNATED AGENCY
- Sec. 2175.363. ACQUISITION, WAREHOUSING, AND DISTRIBUTION OF FEDERAL PROPERTY
- Sec. 2175.364. COMMISSION ASSISTANCE IN PROCUREMENT AND USE OF PROPERTY
- Sec. 2175.365. STATE PLAN OF OPERATION; COMPLIANCE WITH MINIMUM FEDERAL STANDARDS
- Sec. 2175.366. ADMINISTRATIVE FUNCTIONS; COMPLIANCE WITH FEDERAL REQUIREMENTS
- Sec. 2175.367. CONTRACTS
- Sec. 2175.368. ACQUISITION OR IMPROVEMENT OF PROPERTY; RENT PAYMENTS
- Sec. 2175.369. CHARGES
- Sec. 2175.370. SURPLUS PROPERTY SERVICE CHARGE FUND
- Sec. 2175.371. ADVISORY BOARDS AND COMMITTEES
- Sec. 2175.372. PERSONNEL

[Sections 2175.373 to 2175.900 reserved for expansion]

**SUBCHAPTER Z. MISCELLANEOUS PROVISIONS**

- Sec. 2175.901. PURCHASE OF CHAIRS BY CERTAIN STATE OFFICERS AND AGENCY HEADS
- Sec. 2175.902. WASTEPAPER
- Sec. 2175.903. PROPERTY USED AS TRADE-IN

**CHAPTER 2175. SURPLUS AND SALVAGE PROPERTY**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 2175.001. DEFINITIONS. In this chapter:

(1) "Assistance organization" means:

(A) a nonprofit organization that provides educational, health, or human services or assistance to homeless individuals;

(B) a nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals; and

(C) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance office of the Agency for International Development.

(2) "Personal property" includes:

(A) personal property lawfully confiscated and subject to disposal by a state agency; and

(B) personal property affixed to real property, if its removal and disposition is for a lawful purpose under this or another law.

(3) "Salvage property" means personal property that through use, time, or accident is so damaged, used, or consumed that it has no value for the purpose for which it was originally intended.

(4) "Surplus property" means personal property that exceeds a state agency's needs and is not required for the agency's foreseeable needs. The term includes used or new property that retains some usefulness for the purpose for which it was intended or for another purpose. (V.A.C.S. Art. 601b, Sec. 9.01(a)(3) (part), (4) (part), (5), (7).)

Sec. 2175.002. ADMINISTRATION OF CHAPTER. The commission's surplus and salvage property division shall administer this chapter. (V.A.C.S. Art. 601b, Sec. 2.09(c) (part).)

Sec. 2175.003. SEPARATE AND INDEPENDENT OPERATION OF SURPLUS AND SALVAGE PROPERTY DIVISION. (a) The surplus and salvage property division shall operate independently of the rest of the commission, except that the division may share support functions with other divisions.

(b) Administrative offices of the surplus and salvage property division shall be housed in a building that is separate from buildings that house other commission functions.

(c) The commission's assignment to the executive director of direct management duties for the surplus and salvage property division does not alter the requirements of Subsections (a) and (b), except that the executive director's office need not be relocated. (V.A.C.S. Art. 601b, Sec. 2.09(c) (part).)

Sec. 2175.004. CIVIL AIR PATROL; VOLUNTEER FIRE DEPARTMENTS. For purposes of this chapter:

(1) the Civil Air Patrol, Texas Wing, is considered a state agency; and

(2) a volunteer fire department is considered a political subdivision. (V.A.C.S. Art. 601b, Secs. 9.01(b), (c).)

[Sections 2175.005 to 2175.060 reserved for expansion]

#### SUBCHAPTER B. COMMISSION POWERS AND DUTIES

Sec. 2175.061. RULES, FORMS, AND PROCEDURES. (a) The commission shall establish and maintain procedures for the transfer, sale, or disposal of surplus and salvage property as prescribed by law.

(b) Subject to the review and comment of the state auditor, the commission may prescribe forms and reports necessary to administer this chapter and may adopt necessary rules, including rules governing the sale or transfer of surplus or salvage property to state agencies, political subdivisions, or assistance organizations. (V.A.C.S. Art. 601b, Secs. 9.02 (part), 9.04(f), 9.09.)

Sec. 2175.062. MAILING LIST; LIST OF PROSPECTIVE BUYERS. The commission shall maintain:

(1) a mailing list, which it shall renew annually, of assistance organizations and individuals responsible for purchasing for political subdivisions who have requested information regarding available state surplus or salvage property; and

(2) a list of other prospective buyers of surplus and salvage property. (V.A.C.S. Art. 601b, Secs. 9.03, 9.07 (part).)

Sec. 2175.063. MAXIMUM RETURN FROM DISPOSITION OF SURPLUS OR SALVAGE PROPERTY. (a) The commission shall attempt to realize the maximum benefit to the state in selling or disposing of surplus and salvage property.

(b) The commission may reject any or all offers for surplus or salvage property if it determines that rejection is in the state's best interests. (V.A.C.S. Art. 601b, Sec. 9.07 (part).)

Sec. 2175.064. COOPERATION IN EVALUATION AND ANALYSIS. (a) The commission shall cooperate with state agencies in an ongoing effort to evaluate surplus and salvage property to minimize loss resulting from accumulations of property.



(b) The commission shall cooperate with the state auditor in analyzing surplus and salvage property. (V.A.C.S. Art. 601b, Sec. 9.07 (part).)

Sec. 2175.065. DELEGATION OF AUTHORITY TO STATE AGENCY. The commission may authorize a state agency to dispose of surplus or salvage property if the agency demonstrates to the commission its ability to dispose of the property under commission rules adopted under this chapter. (V.A.C.S. Art. 601b, Sec. 9.14 (part).)

[Sections 2175.066 to 2175.120 reserved for expansion]

#### SUBCHAPTER C. DIRECT TRANSFER OF SURPLUS OR SALVAGE PROPERTY

Sec. 2175.121. STATE AGENCY NOTICE TO COMMISSION. A state agency that determines it has surplus or salvage property shall inform the commission of the property's kind, number, location, condition, original cost or value, and date of acquisition. (V.A.C.S. Art. 601b, Sec. 9.04(a).)

Sec. 2175.122. COMMISSION NOTICE TO OTHER ENTITIES. On receiving notice from a state agency that the agency has surplus or salvage property, the commission shall inform other state agencies, political subdivisions, and assistance organizations of the property's kind, number, location, and condition. (V.A.C.S. Art. 601b, Sec. 9.04(b).)

Sec. 2175.123. DIRECT NEGOTIATION FOR TRANSFER. During the 35 days after the date of notice under Section 2175.122, a state agency or political subdivision may negotiate directly with the reporting state agency for a transfer of the property at an agreed value. (V.A.C.S. Art. 601b, Sec. 9.04(c) (part).)

Sec. 2175.124. NOTICE OF TRANSFER TO COMPTROLLER AND COMMISSION; ADJUSTMENT OF APPROPRIATIONS AND INVENTORY. (a) If property is transferred to a state agency, the participating agencies shall report the transaction to the comptroller and the commission.

(b) On receiving notice under this section, the comptroller shall:

- (1) debit and credit the proper appropriations; and
- (2) adjust state inventory records if necessary. (V.A.C.S. Art. 601b, Sec. 9.04(c) (part).)

Sec. 2175.125. PRIORITY FOR TRANSFER TO STATE AGENCY. During the 35 days after the date of notice under Section 2175.122, a transfer to a state agency has priority over any other transfer under rules adopted by the commission. (V.A.C.S. Art. 601b, Sec. 9.04(c) (part).)

[Sections 2175.126 to 2175.180 reserved for expansion]

#### SUBCHAPTER D. DISPOSITION OF SURPLUS OR SALVAGE PROPERTY BY COMPETITIVE BIDDING

Sec. 2175.181. DISPOSITION BY COMPETITIVE BIDDING OR AUCTION. If a disposition of a state agency's surplus or salvage property is not made under Subchapter C, the commission shall:

- (1) sell the property by competitive bid or auction; or
- (2) delegate to the state agency authority to sell the property by competitive bidding. (V.A.C.S. Art. 601b, Sec. 9.05(a) (part).)

Sec. 2175.182. PURCHASER'S FEE. (a) The commission or a state agency disposing of property under this subchapter shall collect a fee from the purchaser.

(b) The commission shall set the fee at an amount that is:

- (1) sufficient to recover costs associated with the sale; and
- (2) at least two percent but not more than 12 percent of sale proceeds. (V.A.C.S. Art. 601b, Secs. 9.05(a) (part), (c) (part), (d) (part).)

Sec. 2175.183. ADVERTISEMENT OF SALE. If the value of an item or a lot of property to be sold is estimated to be more than \$1,000, the commission or the state agency

authorized to sell the property shall advertise the sale at least once in at least one newspaper of general circulation in the vicinity in which the property is located. (V.A.C.S. Art. 601b, Sec. 9.05(b).)

Sec. 2175.184. **REPORTING SALE; INVENTORY ADJUSTMENT.** (a) On the sale by the commission of surplus or salvage property, the commission shall report the property sold and the sale price to the state agency that declared the property as surplus or salvage.

(b) A state agency for which surplus or salvage property is sold or that sells surplus or salvage property under authority of the commission shall report the sale and amount of sale proceeds to the comptroller.

(c) If property reported under this section is on the state inventory, the comptroller shall remove the property from the inventory. (V.A.C.S. Art. 601b, Secs. 9.05(c) (part), (d) (part).)

Sec. 2175.185. **PROCEEDS OF SALE.** (a) Proceeds from the sale of surplus or salvage property, less the cost of advertising the sale, the cost of auctioneer services, and the amount of the fee collected under Section 2175.182, shall be deposited to the credit of the appropriate appropriation item of the state agency for which the sale was made.

(b) The portion of sale proceeds equal to the cost of advertising the sale and the cost of auctioneer services shall be deposited in the state treasury to the credit of the appropriation item of the commission or other state agency from which the costs were paid. (V.A.C.S. Art. 601b, Sec. 9.05(e) (part).)

Sec. 2175.186. **PURCHASER'S TITLE.** A purchaser of surplus or salvage property at a sale conducted under this subchapter obtains good title to the property if the purchaser has in good faith complied with:

- (1) the conditions of the sale; and
- (2) applicable commission rules. (V.A.C.S. Art. 601b, Sec. 9.08.)

[Sections 2175.187 to 2175.240 reserved for expansion]

#### SUBCHAPTER E. DESTRUCTION OF SURPLUS OR SALVAGE PROPERTY

Sec. 2175.241. **WHEN SURPLUS OR SALVAGE PROPERTY MAY BE DESTROYED; REPORT OF DESTRUCTION.** If the commission cannot sell or dispose of property reported to the commission as surplus or salvage, it may order the property destroyed as worthless salvage and report the destruction to the reporting agency. (V.A.C.S. Art. 601b, Sec. 9.06 (part).)

Sec. 2175.242. **REMOVAL OF DESTROYED PROPERTY FROM STATE INVENTORY.** (a) On destruction of property under this subchapter, the comptroller may remove the destroyed property from the state inventory.

(b) Authorization by the commission is not required for the deletion of salvage items of another state agency from the state inventory.

(c) This subchapter does not affect Section 403.273, which provides for the deletion from inventory of a state agency's missing property on the state auditor's authorization. (V.A.C.S. Art. 601b, Sec. 9.06 (part).)

[Sections 2175.243 to 2175.300 reserved for expansion]

#### SUBCHAPTER F. EXCEPTIONS

Sec. 2175.301. **SURPLUS PROPERTY OF LEGISLATURE.** (a) This chapter does not apply to disposition of surplus property by either house of the legislature under a disposition system provided by rules of the administration committee of each house.

(b) If surplus property of either house of the legislature is sold, proceeds of the sale shall be deposited in the state treasury to the credit of that house's appropriation. (V.A.C.S. Art. 601b, Sec. 9.10.)

Sec. 2175.302. **EXCEPTION FOR ELEEMOSYNARY INSTITUTIONS AND INSTITUTIONS AND AGENCIES OF HIGHER EDUCATION.** This chapter does not apply to

the disposition of surplus or salvage property by a state eleemosynary institution or an institution or agency of higher education. (V.A.C.S. Art. 601b, Sec. 9.14 (part).)

Sec. 2175.303. **EXCEPTION FOR CERTAIN PRODUCTS.** This chapter does not apply to disposition of a product or by-product of research, forestry, agriculture, livestock, or an industrial enterprise. (V.A.C.S. Art. 601b, Sec. 9.13.)

[Sections 2175.304 to 2175.360 reserved for expansion]

#### SUBCHAPTER G. FEDERAL SURPLUS PROPERTY

Sec. 2175.361. **DEFINITIONS.** In this subchapter:

(1) "Federal act" means the Federal Property and Administrative Services Act of 1949 (40 U.S.C. Section 484).

(2) "Federal property" means federal surplus property acquired by the commission or under the commission's jurisdiction under this subchapter and under 40 U.S.C. Section 483c or Section 484(j) or (k) of the federal act. The term includes federal real property acquired under Section 484(k) of the federal act. (V.A.C.S. Art. 601b, Sec. 9.01(a)(3) (part), (4) (part), (8).)

Sec. 2175.362. **DESIGNATED AGENCY.** The commission is the designated state agency under Section 484(j) of the federal act. (V.A.C.S. Art. 601b, Sec. 9.16(a).)

Sec. 2175.363. **ACQUISITION, WAREHOUSING, AND DISTRIBUTION OF FEDERAL PROPERTY.** (a) The commission may acquire and warehouse federal property allocated to the commission under the federal act and distribute the property to an entity or institution that meets the eligibility qualifications for the property under the federal act.

(b) The commission shall establish and maintain procedures to implement this section.

(c) The commission is not required to comply with the provisions of this chapter that relate to the disposition of surplus state agency property in acquiring, warehousing, and distributing federal surplus property under this chapter. (V.A.C.S. Art. 601b, Secs. 9.02 (part), 9.16(b).)

Sec. 2175.364. **COMMISSION ASSISTANCE IN PROCUREMENT AND USE OF PROPERTY.** The commission may:

(1) disseminate information and assist a potential applicant regarding the availability of federal real property;

(2) assist in the processing of an application for acquisition of federal real property and related personal property under Section 484(k) of the federal act;

(3) act as an information clearinghouse for an entity that may be eligible to acquire federal property and, as necessary, assist the entity to obtain federal property;

(4) assist in assuring use of the property; and

(5) engage in an activity relating to the use of federal property by another state agency, institution, or organization engaging in or receiving assistance under a federal program. (V.A.C.S. Art. 601b, Secs. 9.16(c), (g).)

Sec. 2175.365. **STATE PLAN OF OPERATION; COMPLIANCE WITH MINIMUM FEDERAL STANDARDS.** The commission shall:

(1) file a state plan of operation that complies with federal law and operate in accordance with the plan;

(2) take necessary action to meet the minimum standards for a state agency in accordance with the federal act; and

(3) cooperate to the fullest extent consistent with this subchapter. (V.A.C.S. Art. 601b, Sec. 9.16(d).)

Sec. 2175.366. **ADMINISTRATIVE FUNCTIONS; COMPLIANCE WITH FEDERAL REQUIREMENTS.** The commission may:

(1) make the necessary certifications and undertake necessary action, including an investigation;

(2) make expenditures or reports that may be required by federal law or regulation or that are otherwise necessary to provide for the proper and efficient management of its functions under this subchapter;

(3) provide information and reports relating to its activities under this subchapter that may be required by a federal agency or department; and

(4) adopt rules necessary for the efficient operation of its activities under this subchapter or as may be required by federal law or regulation. (V.A.C.S. Art. 601b, Sec. 9.16(e).)

Sec. 2175.367. **CONTRACTS.** The commission may enter into an agreement, including:

(1) a cooperative agreement with a federal agency under Section 484(n) of the federal act;

(2) an agreement with a state agency for surplus property of a state agency that will promote the administration of the commission's functions under this subchapter; or

(3) an agreement with a group or association of state agencies for surplus property that will promote the administration of the commission's functions under this subchapter. (V.A.C.S. Art. 601b, Sec. 9.16(f).)

Sec. 2175.368. **ACQUISITION OR IMPROVEMENT OF PROPERTY; RENT PAYMENTS.** The commission may:

(1) acquire and hold title or make capital improvements to federal real property in accordance with Section 2175.369; or

(2) make an advance payment of rent for a distribution center, an office space, or another facility that is required to accomplish the commission's functions under this subchapter. (V.A.C.S. Art. 601b, Sec. 9.16(h).)

Sec. 2175.369. **CHARGES.** (a) The commission may collect a service charge for the commission's acquisition, warehousing, distribution, or transfer of federal property.

(b) The commission may not collect a charge for federal real property in an amount that is greater than the reasonable administrative cost the commission incurs in transferring the property. (V.A.C.S. Art. 601b, Sec. 9.16(i).)

Sec. 2175.370. **SURPLUS PROPERTY SERVICE CHARGE FUND.** (a) The commission shall deposit a charge collected under Section 2175.369 in the state treasury to the credit of the surplus property service charge fund.

(b) Income earned on money in the surplus property service charge fund shall be credited to that fund.

(c) Money in the surplus property service charge fund may be used only to accomplish the commission's functions under this subchapter. (V.A.C.S. Art. 601b, Sec. 9.16(j).)

Sec. 2175.371. **ADVISORY BOARDS AND COMMITTEES.** The commission may appoint advisory boards and committees necessary and suitable to administer this subchapter. (V.A.C.S. Art. 601b, Sec. 9.16(k).)

Sec. 2175.372. **PERSONNEL.** (a) The commission may employ, compensate, and prescribe the duties of personnel, other than members of advisory boards and committees, necessary and suitable to administer this subchapter.

(b) The commission may fill a personnel position only with an individual selected and appointed on a nonpartisan merit basis. (V.A.C.S. Art. 601b, Sec. 9.16(l).)

[Sections 2175.373 to 2175.900 reserved for expansion]

## SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 2175.901. **PURCHASE OF CHAIRS BY CERTAIN STATE OFFICERS AND AGENCY HEADS.** (a) Notwithstanding other law, on vacating an office or terminating employment, an elected or appointed state officer or an executive head of a state agency in the legislative, executive, or judicial branch of state government may purchase for fair market value the chair used by the officer or employee during the person's period of state service.

(b) The fair market value of a chair shall be determined:

(1) for an executive agency or a legislative agency other than the legislature, by the commission;

(2) for a judicial agency, by the chief justice of the supreme court;

(3) for the house of representatives, by the speaker of the house of representatives; and

(4) for the senate, by the lieutenant governor. (V.A.C.S. Art. 601b, Sec. 9.11.)

Sec. 2175.902. WASTEPAPER. (a) The commission shall establish and maintain in each building under its control facilities for collecting separately from other wastes all wastepaper disposed of in that building.

(b) The commission shall sell the wastepaper for recycling to the highest bidder. (V.A.C.S. Art. 601b, Sec. 9.15.)

Sec. 2175.903. PROPERTY USED AS TRADE-IN. A state agency may offer surplus or salvage property as a trade-in on new property of the same general type if the exchange is in the state's best interests. (V.A.C.S. Art. 601b, Sec. 9.12.)

#### CHAPTER 2176. MAIL

##### SUBCHAPTER A. EVALUATION AND PLANNING OF MAIL OPERATIONS

Sec. 2176.001. MAIL OPERATIONS OFFICER

Sec. 2176.002. STATE AGENCY EVALUATION AND IMPROVEMENT OF MAIL OPERATIONS

Sec. 2176.003. COMMISSION EVALUATION OF STATE AGENCY MAIL OPERATIONS

Sec. 2176.004. COMMISSION PROCEDURES FOR IMPROVEMENT OF MAIL OPERATIONS

Sec. 2176.005. STATE AGENCY REPORTS ON MAIL OPERATIONS

Sec. 2176.006. MAILING LISTS

[Sections 2176.007 to 2176.050 reserved for expansion]

##### SUBCHAPTER B. INTERAGENCY MAIL

Sec. 2176.051. INTERAGENCY MAIL SERVICE

Sec. 2176.052. USE OF UNITED STATES POSTAL SERVICE; ALTERNATE DELIVERY METHODS

Sec. 2176.053. DELIVERY OF STATE WARRANTS

[Sections 2176.054 to 2176.100 reserved for expansion]

##### SUBCHAPTER C. OUTGOING FIRST-CLASS MAIL IN TRAVIS COUNTY

Sec. 2176.101. APPLICABILITY OF SUBCHAPTER

Sec. 2176.102. COMMISSION EVALUATION

Sec. 2176.103. DISCOUNTED POSTAL RATES

Sec. 2176.104. REQUIREMENT TO CONSULT WITH COMMISSION

Sec. 2176.105. GUIDELINES FOR MEASURING AND ANALYZING FIRST-CLASS MAIL PRACTICES

Sec. 2176.106. TRAINING

Sec. 2176.107. PREREQUISITE TO UPGRADING OR REPLACING MAIL EQUIPMENT; COMPARISON AND ANALYSIS

Sec. 2176.108. REVIEW AND COMMENT BY STATE AUDITOR

Sec. 2176.109. FEES FOR COMMISSION SERVICES

Sec. 2176.110. RULES

[Sections 2176.111 to 2176.150 reserved for expansion]

##### SUBCHAPTER D. PROCESSING OF MAIL

Sec. 2176.151. TIMELY PROCESSING OF MAIL

Sec. 2176.152. PROCESSING UNITED STATES MAIL IN CAPITOL COMPLEX

## CHAPTER 2176. MAIL

## SUBCHAPTER A. EVALUATION AND PLANNING OF MAIL OPERATIONS

Sec. 2176.001. MAIL OPERATIONS OFFICER. A state agency in Travis County shall designate a person to manage mail for the agency's offices and units. (V.A.C.S. Art. 601b, Sec. 11.02(i) (part).)

Sec. 2176.002. STATE AGENCY EVALUATION AND IMPROVEMENT OF MAIL OPERATIONS. To improve state agency management of mail and to reduce the state's mail costs, a state agency in the executive branch of state government shall:

(1) evaluate its mail operations to identify and eliminate practices resulting in excessive mail costs; and

(2) develop and implement plans and procedures for making necessary improvements in mail operations. (V.A.C.S. Art. 601b, Sec. 11.02(e).)

Sec. 2176.003. COMMISSION EVALUATION OF STATE AGENCY MAIL OPERATIONS. The commission shall:

(1) evaluate the mail operations of state agencies located in Travis County and make recommendations to identify and eliminate practices resulting in excessive mail costs; and

(2) establish minimum objectives and responsibilities for managing mail for the agencies. (V.A.C.S. Art. 601b, Sec. 11.02(f).)

Sec. 2176.004. COMMISSION PROCEDURES FOR IMPROVEMENT OF MAIL OPERATIONS. The commission shall:

(1) in conjunction with the United States Postal Service, establish procedures to improve the measurement of state agency mail costs, using postage meters or stamps as appropriate;

(2) establish procedures to determine the advantages to state agencies of presorting mail;

(3) establish procedures to determine the lowest cost class of mail necessary to effectively accomplish individual state agency functions;

(4) evaluate the cost-effectiveness of using alternatives to the United States Postal Service for delivering state agency mail;

(5) train state agency personnel regarding cost-effective mailing practices;

(6) set standards for receipt, delivery, collection, and dispatch of mail; and

(7) publish and disseminate standards, guides, and instructions for managing mail and establish and implement procedures for monitoring compliance with the standards, guides, and instructions. (V.A.C.S. Art. 601b, Secs. 11.02(g), (h).)

Sec. 2176.005. STATE AGENCY REPORTS ON MAIL OPERATIONS. (a) A state agency in Travis County shall periodically send to the governor and the legislative budget office a report of its progress in achieving the objectives for and the revisions of mail operations established under Section 2176.004, including an analysis of savings projected from the resulting improvements in managing mail.

(b) When two or more state agencies by interagency contract are providing common services for managing mail, the agencies may designate a single agency to report on behalf of all agencies participating under the contract. (V.A.C.S. Art. 601b, Secs. 11.02(i) (part), (j).)

Sec. 2176.006. MAILING LISTS. A state agency in Travis County shall review and consolidate mailing lists used by the agency to distribute publications and other materials issued by the agency. (V.A.C.S. Art. 601b, Sec. 11.02(i) (part).)

[Sections 2176.007 to 2176.050 reserved for expansion]

## SUBCHAPTER B. INTERAGENCY MAIL

Sec. 2176.051. INTERAGENCY MAIL SERVICE. (a) The commission shall operate a messenger service for delivering unstamped written communications and packages between the following entities located in Travis County:

- (1) state agencies;
- (2) the legislature; and
- (3) legislative agencies.

(b) All entities described by Subsection (a) shall use the service. (V.A.C.S. Art. 601b, Sec. 11.02(a).)

Sec. 2176.052. **USE OF UNITED STATES POSTAL SERVICE; ALTERNATE DELIVERY METHODS.** An entity subject to Section 2176.051 may use a delivery method other than that provided under Section 2176.051 for delivering interagency mail to another entity subject to Section 2176.051 but may not use the United States Postal Service for the delivery unless required to do so under state or federal law. (V.A.C.S. Art. 601b, Sec. 11.02(b).)

Sec. 2176.053. **DELIVERY OF STATE WARRANTS.** State warrants may be delivered in a manner agreed to by the comptroller, the commission, and the affected agency. (V.A.C.S. Art. 601b, Sec. 11.02(c).)

[Sections 2176.054 to 2176.100 reserved for expansion]

#### SUBCHAPTER C. OUTGOING FIRST-CLASS MAIL IN TRAVIS COUNTY

Sec. 2176.101. **APPLICABILITY OF SUBCHAPTER.** This subchapter applies only to outgoing first-class mail practices of a state agency located in Travis County. (V.A.C.S. Art. 601b, Sec. 11.021(a).)

Sec. 2176.102. **COMMISSION EVALUATION.** The commission shall evaluate the outgoing first-class mail practices of state agencies located in Travis County, including the lists, systems, and formats used to create mail. (V.A.C.S. Art. 601b, Sec. 11.021(b) (part).)

Sec. 2176.103. **DISCOUNTED POSTAL RATES.** The commission shall achieve the maximum available discount on postal rates whenever acceptable levels of timeliness, security, and quality of service can be maintained using the discounted rate. (V.A.C.S. Art. 601b, Sec. 11.021(c).)

Sec. 2176.104. **REQUIREMENT TO CONSULT WITH COMMISSION.** A state agency to which this subchapter applies shall consult the commission before the agency may:

- (1) purchase, upgrade, or sell mail processing equipment;
- (2) contract with a private entity for mail processing; or
- (3) take actions that significantly affect the agency's first-class mail practices. (V.A.C.S. Art. 601b, Sec. 11.021(d).)

Sec. 2176.105. **GUIDELINES FOR MEASURING AND ANALYZING FIRST-CLASS MAIL PRACTICES.** (a) The commission shall adopt and distribute to each state agency to which this subchapter applies guidelines by which outgoing first-class mail practices may be measured and analyzed. The guidelines must require using the services of the United States Postal Service to the extent possible.

(b) The commission shall review and update the guidelines at least once every two years, beginning two years after the date on which the guidelines are adopted. (V.A.C.S. Art. 601b, Sec. 11.021(f) (part).)

Sec. 2176.106. **TRAINING.** (a) Not later than the 90th day after the date on which the initial guidelines under Section 2176.105 are distributed, and at least annually beginning one year after the date of distribution, the commission shall provide training to state agency personnel who handle first-class mail.

(b) The commission may use to the extent possible free training provided by the United States Postal Service. (V.A.C.S. Art. 601b, Sec. 11.021(f) (part).)

Sec. 2176.107. **PREREQUISITE TO UPGRADING OR REPLACING MAIL EQUIPMENT; COMPARISON AND ANALYSIS.** (a) If the commission determines that upgrading existing mail production or processing equipment or purchasing new mail production or processing equipment is required to improve outgoing first-class mail practices of the commission or another state agency located in Travis County, the commission shall prepare a

cost-benefit analysis demonstrating that the upgrade or purchase is more cost-effective than contracting with a private entity to provide the equipment or mail service.

(b) The commission shall approve the most cost-effective method. (V.A.C.S. Art. 601b, Sec. 11.021(g).)

Sec. 2176.108. REVIEW AND COMMENT BY STATE AUDITOR. (a) A cost-benefit analysis prepared under this subchapter and a request for bids or a request for proposals prepared for an action taken under this subchapter shall be sent to the state auditor for review and comment as soon as practicable after preparation.

(b) The state auditor's office shall perform its review and offer its comments not later than the 14th working day after the date it receives the analysis or the request for bids or proposals. (V.A.C.S. Art. 601b, Sec. 11.021(h).)

Sec. 2176.109. FEES FOR COMMISSION SERVICES. (a) The commission by inter-agency contract shall charge and collect fees from each state agency to which this subchapter applies for the commission's services under this subchapter.

(b) The total amount charged a state agency under this section may not exceed the amount of the agency's appropriated funds for outgoing first-class mail, as determined by the Legislative Budget Board, minus the agency's fixed costs for these services.

(c) The commission shall transfer to the general revenue fund the amount of a fee charged a state agency under this section that is greater than the amount of the commission's actual expenses for performing the services for the agency. (V.A.C.S. Art. 601b, Sec. 11.021(e).)

Sec. 2176.110. RULES. The commission shall adopt rules for state agencies to implement this subchapter. (V.A.C.S. Art. 601b, Sec. 11.021(b) (part).)

[Sections 2176.111 to 2176.150 reserved for expansion]

#### SUBCHAPTER D. PROCESSING OF MAIL

Sec. 2176.151. TIMELY PROCESSING OF MAIL. Mail shall:

- (1) be processed for delivery as quickly as necessary under existing circumstances; and
- (2) not be unduly delayed only to achieve a lower postal rate. (V.A.C.S. Art. 601b, Sec. 11.02(d) (part).)

Sec. 2176.152. PROCESSING UNITED STATES MAIL IN CAPITOL COMPLEX. United States mail may be delivered to and from the post office located in the capitol complex on agreement between the commission and the affected agency. (V.A.C.S. Art. 601b, Sec. 11.02(d) (part).)

SECTION 2. CONFORMING AMENDMENT. Section 5.19, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is transferred to Subchapter B, Chapter 444, Government Code, redesignated as Section 444.029, and amended to read as follows:

Sec. 444.029 [5.19]. EXPENDITURES FOR FINE ARTS PROJECTS ON CERTAIN PUBLIC CONSTRUCTION PROJECTS ~~[EXEMPT AGENCIES]~~. (a) Any using agency exempt from Chapter 2166 under Section 2166.003 ~~[5.13 of this article]~~ and any county, municipality ~~[city]~~, or other political subdivision of this state undertaking a public construction project estimated to cost more than ~~[in excess of]~~ \$250,000 may specify ~~[designate]~~ that a percentage not to exceed one percent of the cost of the ~~[a public]~~ construction project shall be used for fine arts projects at or near the site of the construction project.

(b) The using agency or the governing body of a political subdivision may consult and cooperate with the commission ~~[Texas Commission on the Arts]~~ for advice in determining how to use ~~[utilize]~~ the portion of the cost set aside for fine arts purposes.

(c) The commission ~~[Texas Commission on the Arts]~~ shall place emphasis on works by living Texas artists whenever feasible~~[,]~~ and, when consulting with the governing body of a political subdivision, shall place emphasis on works by artists who reside in or near the political subdivision. Consideration shall be given to artists of all ethnic origins.



(d) In this section, "construction," "cost of a project," "project," and "using agency" have the meanings assigned by Section 2166.001.

SECTION 3. CONFORMING AMENDMENT. Section 3.051, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is transferred to Subchapter A, Chapter 465, Government Code, redesignated as Section 465.018, Government Code, and amended to read as follows:

Sec. 465.018. PURCHASES, CONSTRUCTION, AND DISPOSITION OF PROPERTY.

(a) Subtitle D, Title 10, does not apply to:

(1) a purchase of mission-related supplies, materials, services, or equipment for the commission or for a financing corporation formed under Section 465.008(g) that is determined by the commission to be an eligible undertaking as defined by Section 465.021; or

(2) a construction project or disposition of property by or for the commission or by or for a financing corporation formed under Section 465.008(g) that is determined by the commission to be an eligible undertaking as defined by Section 465.021.

(b) This section does not prohibit the commission from using the General Services Commission's services.

(c) In this section, "mission-related supplies, materials, services, and equipment" are those designated by commission rule. ~~[3.051. PURCHASES BY TEXAS NATIONAL RESEARCH LABORATORY COMMISSION. (a) This Act, including without limitation Articles 5 and 9 of this Act, does not apply to purchases of mission-related supplies, materials, services, and equipment for the Texas National Research Laboratory Commission or for any financing corporation formed under Section 465.008(g), Government Code, or to any construction projects or dispositions of property by or for the Texas National Research Laboratory Commission or by or for any financing corporation formed under Section 465.008(g), Government Code, that are determined by the Texas National Research Laboratory Commission to be eligible undertakings as defined by Section 465.021, Government Code, except that the Texas National Research Laboratory Commission may use the services of the commission.~~

~~[(b) In this section, "mission-related supplies, materials, services, and equipment" are those designated by Texas National Research Laboratory Commission rule.]~~

SECTION 4. REPEALER. Chapter 2202, Government Code, is repealed to conform to the repeal of the source law for that chapter, Chapter 32, Acts of the 62nd Legislature, Regular Session, 1971 (Article 6252-6b, Vernon's Texas Civil Statutes), by Section 2.13, Chapter 906, Acts of the 73rd Legislature, 1993.

SECTION 5. REPEALER. The State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes) is repealed, except that Subsection (c), Section 5.26, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is not repealed by this Act but expires according to its terms.

SECTION 6. LEGISLATIVE INTENT OF NO SUBSTANTIVE CHANGE. This Act is enacted under Section 43, Article III, Texas Constitution. This Act is intended as a recodification only, and no substantive change in the law is intended by this Act.

SECTION 7. SAVINGS PROVISION. (a) For the purposes of Section 403.094, Government Code, the revision and codification by this Act of a statute relating to a fund in existence on or before August 31, 1993, does not re-create the fund and does not constitute the reenactment of a dedication of revenue.

(b) A fund or account, the existence of which is derived from a statute revised by this Act and which is abolished under Section 403.094, Government Code, before the effective date of this Act is not revived or re-created by this Act.

(c) The application of Sections 403.094 and 403.095, Government Code, to a fund or to the permissible uses of revenue or fund balances is not affected by this Act.

SECTION 8. EFFECTIVE DATE. This Act takes effect September 1, 1995.

SECTION 9. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 3, 1995: Yeas 30, Nays 0; passed the House on April 21, 1995, by a non-record vote.

Approved May 5, 1995.

Effective September 1, 1995.

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## CHAPTER 42

### S.B. No. 1172

#### AN ACT

relating to the exclusion of certain nonirrigated property from certain water districts.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Subchapter O, Chapter 51, Water Code, is amended by adding Sections 51.759 through 51.766 to read as follows:

*Sec. 51.759. EXCLUSION OF CERTAIN NONIRRIGATED LAND. (a) If a district is principally engaged in providing water for agricultural irrigation or the primary purpose of the district is to provide water for agricultural irrigation, by complying with Sections 51.760 through 51.766, the board may exclude from the district land that is not being irrigated because:*

*(1) the land is not irrigable;*

*(2) the owners of a majority of the acreage of the land no longer intend to irrigate the land;*

*(3) the land has been subdivided into town lots, town lots and blocks, or small parcels having the same general nature of town lots, including lots and blocks designed, intended, or suitable for a residential, commercial, or other nonagricultural purpose; or*

*(4) the land is located on subdivided land and is:*

*(A) designated as a street, alley, parkway, or park; or*

*(B) a railroad property or right-of-way.*

*(b) Land described by Subsection (a) may be excluded regardless of whether:*

*(1) the land is within or near municipal boundaries; or*

*(2) a plat or map of the land has been filed for record in the office of the county clerk of the county in which any part of the land is located.*

*(c) The board may not exclude land described by Subsection (a) if the land has been used for an agricultural purpose within the year preceding the date of the hearing held under Section 51.761.*

*Sec. 51.760. INITIATING EXCLUSION. (a) A petition to exclude land may be filed with the board by the owners of a majority in acreage of land described by Section 51.759 that is located in the district.*

*(b) The petition must accurately describe the land to be excluded by metes and bounds or lot and block number. A petition for exclusion of other property must describe the property to be excluded.*

*(c) The board may initiate a proceeding to exclude land without receiving a petition by holding a hearing on its own motion and issuing an order as provided by Section 51.761.*

*Sec. 51.761. HEARING, NOTICE, AND ORDER OF EXCLUSION. (a) On the board's motion or on receipt of a petition to exclude land, the board shall give notice and hold a hearing on the proposed exclusion.*

*(b) The board shall publish notice of the hearing in a newspaper of general circulation in the district once each week for two consecutive weeks. The first publication must appear at least 14 days before the date of the hearing.*

*(c) The notice must advise interested property owners in the district:*